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7 Attorneys for ARRIVA PHARMACEUTICALS, INC.

8
9 UNITED STATES DISTRICT COURT

10 NORTHERN DISTRICT OF CALIFORNIA

11 On Appeal from the United States Bankruptcy Court
for the Northern District of California
12 Hon. Edward D. Jellen

13 SONORAN DESERT CHEMICALS, LLC

No. 08-00693

14 Plaintiff-Appellant,

15 v.

16 ARRIVA PHARMACEUTICALS, INC.

17 Defendant-Appellee.

**NOTICE OF PENDENCY OF
ADMINISTRATIVE MOTION TO
CONSIDER WHETHER CASES SHOULD
BE RELATED**

[Civ. L.R. 3-12]

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20
21 **NOTICE**

22 This notice is intended simply to apprise this Court that Defendant-Appellee Arriva
23 Pharmaceuticals, Inc. has filed an Administrative Motion to Consider Whether Cases Should Be
24 Related (the "Motion"), pursuant to Civil Local Rule 3-12, before United States District Judge
25 Illston in a previously filed case.

1 The Motion, filed in *AlphaOne Pharmaceuticals Inc. v. Sonoran Desert Chemicals, LLC*,
2 no. 99-02169, asks that United States District Judge Illston deem four bankruptcy appeals,
3 including the above-captioned appeal, to be related. Accordingly, the Motion further requests that
4 all four appeals, including the above-captioned appeal, be assigned to District Judge Illston.
5 District Judge Illston has not yet ruled on the Motion. A true and correct copy of the Motion is
6 attached as Exhibit A.

7
8 DATED: February 4, 2008

9 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

10
11 By /s/ Timothy C. Perry
12 TIMOTHY C. PERRY

13 Attorneys for ARRIVA PHARMACEUTICALS, INC.
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EXHIBIT A

A - 1

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8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA

10 On Appeal from the United States Bankruptcy Court
for the Northern District of California
11 Hon. Edward D. Jellen

12 ALPHAONE PHARMACEUTICALS, INC.,

No. 99-02169

13 Plaintiff,

**ADMINISTRATIVE MOTION TO
CONSIDER WHETHER CASES SHOULD
BE RELATED**

14 v.

15 SONORAN DESERT CHEMICALS, LLC,
etc., et al..

[Civ. L.R. 3-12]

16 Defendants.
17

18 **I. NOTICE OF MOTION & MOTION**

19 Please take notice that pursuant to Civil Local Rule 3-12, plaintiff Arriva Pharmaceuticals,
20 Inc. ("Arriva") (previously named AlphaOne Pharmaceuticals, Inc.) hereby submits the following
21 Administrative Motion to Consider Whether Cases Should Be Related (the "Motion"). In support
22 of the Motion, Arriva files a Declaration of Michael H. Ahrens (the "Ahrens Declaration") and a
23 proposed order.

24 Arriva asks that four recently filed bankruptcy appeals be considered related to the above-
25 captioned case. One of these appeals is currently docketed in this court as *In re Arriva*
26 *Pharmaceuticals Inc.*, no. 08-00691. The remaining three appeals, *Sonoran Desert Chemicals,*
27 *LLC v. Arriva Pharmaceuticals, Inc.*, no. __-__, *Protease Sciences, Inc. v. Arriva*
28

1 *Pharmaceuticals, Inc.*, no. ____-____ and *AlphaMed Pharmaceuticals Corp. v. Arriva*
 2 *Pharmaceuticals Inc.*, no. ____-____, have been transferred to this Court by the Ninth Circuit
 3 Bankruptcy Appellate Panel, but have not yet received docket numbers in this Court. We request
 4 that all four appeals be assigned to United States District Judge Illston.

5 II. DESCRIPTION OF RELATED CASES

6 A. The Arriva Declaratory Relief Case before District Judge Illston

7 On May 10, 1999, Arriva (then doing business primarily as AlphaOne Pharmaceuticals,
 8 Inc.) filed a complaint for damages and declaratory relief in this Court, Case No. 99-cv-02169 (the
 9 "Arriva Declaratory Relief Case"). United States District Judge Illston presided over that case,
 10 entering the most recent substantive order on July 17, 2006, dismissing Arriva's claims and
 11 defendants' counterclaims. (Ex A to the Ahrens Declaration.) That case concluded recently, on
 12 December 18, 2006. (Ex B to the Ahrens Declaration, 1.)

13 B. The Bankruptcy Appeals

14 On September 17, 2007, Arriva filed for Chapter 11 bankruptcy in the Bankruptcy Court in
 15 a case docketed as no. 07-42767. On December 27, 2007, the Bankruptcy Court entered final
 16 orders separately disallowing the claims of Sonoran Desert Chemicals LLC ("Sonoran"),
 17 AlphaMed Pharmaceuticals Corp. ("AlphaMed") and Protease Sciences, Inc. ("PSI"). On January
 18 4, 2008, Sonoran, AlphaMed and PSI separately appealed those final orders to the Ninth Circuit
 19 Bankruptcy Appellate Panel (the "BAP"), which docketed the cases at 08-1008, 08-1009 and 08-
 20 1010. Arriva then filed three separate Statements of Election, pursuant to 28 U.S.C. §
 21 158(c)(1)(B) and Bankruptcy Rule 8001(e)-1, corresponding to the three separate notices of
 22 appeal. As a result, on January 17, 2008, the BAP transferred the three cases (together, the
 23 "Bankruptcy Appeals") to this Court. Only one of these appeals, *In re Arriva Pharmaceuticals*
 24 *Inc.*, no. 08-00691, has received a docket number in this Court.

25 C. The Adversary Appeal

26 On October 30, 2007, AlphaMed filed an adversary action against Arriva in the
 27 Bankruptcy Court. On January 14, 2008, the Bankruptcy Court entered an order dismissing
 28 AlphaMed's complaint with prejudice. On January 23, 2008, AlphaMed appealed that order to the

1 BAP, which docketed the case at 08-1023. Arriva then filed a Statement of Election pursuant to
2 28 U.S.C. § 158(c)(1)(B) and Bankruptcy Rule 8001(e)-1. As a result, on January 29, 2008, the
3 BAP transferred that case (the "Adversary Appeal") to this Court.

4 III. DISCUSSION

5 The Bankruptcy Appeals, the Adversary Appeal and the Arriva Declaratory Relief Case
6 are "related cases" according to the criteria set forth in Civil Local Rule 3-12(a).

7 First, these cases involve the same parties. Arriva, plaintiff in the Arriva Declaratory
8 Relief Case, is debtor-appellee in the Bankruptcy Appeals and defendant-appellee in the
9 Adversary Appeal. By comparison, both Sonoran and PSI were defendants in the Arriva
10 Declaratory Relief Case, and now are claimants-appellants in the Bankruptcy Appeals. Claimant-
11 appellant AlphaMed, though technically not a party to the Arriva Declaratory Relief Case, is
12 controlled by the same principals as Sonoran and PSI and asserts interests identical to those of
13 Sonoran and PSI. Moreover, AlphaMed is plaintiff-appellant in the Adversary Appeal.

14 Second, these cases concern the same property. In the Arriva Declaratory Relief Case,
15 Arriva sought to establish its rights to certain intellectual property known as the "Protease/Arriva
16 License" or "Protease License." As United States District Judge Illston stated in her opinion,
17 "[t]he validity of this Protease/Arriva license is the central disputed issue giving rise to this
18 action." (Ex A to the Ahrens Declaration, 2:16.) By the same token, in the Bankruptcy Appeals,
19 Sonoran, PSI and AlphaMed each challenge the Bankruptcy Court's disposition of the very same
20 property, appealing the disallowance of their claims, based in part on their alleged interests in the
21 Protease/Arriva License. (Ex D to the Ahrens Declaration, 11:1-20). Meanwhile, in the
22 Adversary Appeal, AlphaMed makes an identical challenge to the Bankruptcy Court's disposition
23 of its claim to the Protease License.

24 Third, these cases implicate the same legal issues. In the Arriva Declaratory Relief Case,
25 District Judge Illston dismissed Sonoran and PSI's counterclaims because principles of federalism
26 and comity, as manifest in the *Brillhart* doctrine, *Brillhart v. Excess Ins. Co.*, 316 U.S. 491 (1941),
27 prevented her from adjudicating the dispute. (Ex A to the Ahrens Declaration, 7 et seq.) An
28 Arizona Superior Court, Judge Illston noted, already was considering the issues raised in the

1 Arriva Declaratory Relief Case. (Id.) As Judge Illston held, "comity between this Court and the
2 Arizona Superior Court warrants denial of jurisdiction." (Id., 7:27-28.) In addition, Judge Illston
3 noted the Arizona Court had issued injunctions forbidding Sonoran's principals from pursuing in
4 court Sonoran's purported rights to the Protease/Arriva License. (Id., 13:1-5.) In the Bankruptcy
5 Court decisions underlying the Bankruptcy Appeals and the Adversary Appeal, the Bankruptcy
6 Court cited similar reasons in disallowing Sonoran, AlphaMed and PSI's claims against the
7 bankruptcy estate. The Bankruptcy Court held Sonoran and PSI's principals could not assert their
8 claims to the Protease/Arriva License without violating the Arizona Court's injunctions. (Ex D to
9 the Ahrens Declaration, 11:1-20.) In addition, the Bankruptcy Court relied on principles of
10 federalism and comity in disallowing the claims of AlphaMed and dismissing its adversary
11 complaint. Specifically, the Bankruptcy Court held that the *Rooker-Feldman* doctrine, *see Exxon*
12 *Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280 (2005), prohibited it from directly
13 reviewing issues already adjudicated by the Arizona Superior Court. (Ex D to the Ahrens
14 Declaration, 10:3-14 & 11:14-20.)

15 As a result of these similarities, assigning the Bankruptcy Appeals or the Adversary
16 Appeal to a Judge other than United States District Judge Illston would result in an "unduly
17 burdensome duplication of labor and expense." Civ. L.R. 3-12(a)(2). The Bankruptcy Appeals
18 and the Adversary Appeal are procedurally complex. To date, the parties to the Bankruptcy
19 Appeals and the Adversary Appeal have litigated in the Southern District of Florida, Arizona State
20 Court, Nevada State Court, the Bankruptcy Court for the Northern District of California, as well as
21 before this Court—first before Judge Illston in the Arriva Declaratory Relief Case, and now with
22 respect to the Bankruptcy Appeals and the Adversary Appeal. Fortunately, however, Judge Illston
23 is already familiar with this history of litigation, having ably outlined its most salient points in her
24 most recent order. (Ex A to the Ahrens Declaration, 1-7.) Moreover, the Bankruptcy Appeals and
25 the Adversary Appeal are factually complex. Sonoran, PSI and AlphaMed exist in relation to a
26 myriad of affiliated entities and their principals. Fortunately again, however, Judge Illston already
27 has become familiar with the relationships among these entities, as demonstrated in her most
28 recent order. (Ex A to the Ahrens Declaration, 1-3.)

1 Further, assigning the Bankruptcy Appeals or the Adversary Appeal to a Judge other than
 2 District Judge Illston would risk creating "conflicting results." Civ. L.R. 3-12(a)(2). District
 3 Judge Illston already has rendered factual findings and rulings in the Arriva Declaratory Relief
 4 Case. Were another Judge to undertake an overlapping analysis of the Bankruptcy Appeals or the
 5 Adversary Appeal, it could result in inconsistent findings of fact and conclusions of law with
 6 respect to the same parties, the same property and the same issues.

7 As the lengthy docket of the Arriva Declaratory Relief Case reveals, for many years United
 8 States District Judge Illston maintained an ongoing familiarity with the parties, facts, legal issues
 9 and procedural history implicated by these cases. Indeed, the Arriva Declaratory Relief Case
 10 concluded only recently, on December 18, 2006. Accordingly, this Court should deem the Arriva
 11 Declaratory Relief Case, the three Bankruptcy Appeals and the Adversary Appeal "related cases"
 12 for the purposes of Local Civ. Rule 3-12, and assign the Bankruptcy Appeals and the Adversary
 13 Appeal to United States District Judge Illston.

14 IV. CONCLUSION

15 For the foregoing reasons, we request this Court deem the Arriva Declaratory Relief Case,
 16 the Bankruptcy Appeals, docketed as nos. 08-00691 and two other numbers yet to be decided, as
 17 well as the Adversary Appeal, to be "related cases" for the purposes of Civil Local Rule 3-12, and
 18 assign these cases to District Judge Illston.

19
 20 DATED: January 31, 2008

21 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

22
 23 By /s/ Timothy C. Perry
 24 TIMOTHY C. PERRY

25 Attorneys for Debtor
 26
 27
 28

A – 2 (Part 1)

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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13 On Appeal from the United States Bankruptcy Court
14 for the Northern District of California
Hon. Edward D. Jellen

15 ALPHAONE PHARMACEUTICALS, INC.,

16 Plaintiff,

17 v.

18 SONORAN DESERT CHEMICALS, LLC,
19 etc., et al..

20 Defendants.

No. 99-02169 _____

**DECLARATION OF MICHAEL H.
AHRENS IN SUPPORT OF
ADMINISTRATIVE MOTION TO
CONSIDER WHETHER CASES SHOULD
BE RELATED**

1 I, Michael H. Ahrens, declare as follows:

2 1. I am an attorney licensed to practice law in the State of California and am
3 admitted before this Court. I am a partner with the law firm of Sheppard, Mullin, Richter
4 & Hampton LLP ("Sheppard Mullin"), bankruptcy counsel for Arriva Pharmaceuticals,
5 Inc., a California corporation ("Arriva"), the plaintiff in the above-captioned case. I make
6 this declaration in that capacity. Except for those statements made upon information and
7 belief, the following facts are based upon my personal knowledge and if called to testify, I
8 could and would competently testify to such facts. As to those statements made upon
9 information and belief, I believe them to be true.

10 2. This declaration is submitted in support of Administrative Motion to
11 Consider Whether Cases Should Be Related (the "Motion").

12 3. The above-captioned case is related to four bankruptcy appeals recently
13 transferred to this Court.

14 4. On May 10, 1999, Arriva (then doing business primarily as AlphaOne
15 Pharmaceuticals, Inc.) filed a complaint for damages and declaratory relief in this Court,
16 docketed as case No. 99-cv-02169 (the "Arriva Declaratory Relief Case"). United States
17 District Judge Illston presided over that case, entering the most recent substantive order on
18 July 17, 2006, granting plaintiff's motion to dismiss defendants' declaratory relief
19 counterclaim, conditioned upon plaintiff's dismissal of claims. A copy of that most recent
20 order is attached as Exhibit A. That case concluded recently, on December 18, 2006. A
21 printout of the PACER docket from this case is attached as Exhibit B.

22 5. On September 17, 2007, Arriva filed Chapter 11 bankruptcy in the
23 Bankruptcy Court for the Northern District of California (the "Bankruptcy Court"). That
24 bankruptcy case is docketed as case no. 07-42767.

25 6. On December 27, 2007, the Bankruptcy Court entered final orders separately
26 disallowing the claims of Sonoran Desert Chemicals LLC ("Sonoran"), AlphaMed
27 Pharmaceuticals Corp. ("AlphaMed") and Protease Sciences, Inc. ("PSI"). Those final
28 orders are attached as Exhibit C. A transcript of the proceeding during which the

1 Bankruptcy Court entered its findings of fact and conclusions of law into the record is
2 attached as Exhibit D.

3 7. On January 4, 2008, Sonoran, AlphaMed and PSI separately appealed those
4 final orders to the Ninth Circuit Bankruptcy Appellate Panel.

5 8. On January 11, 2008, Arriva filed three Statements of Election,
6 corresponding to the three separate notices of appeal.

7 9. On January 17, 2008, the Ninth Circuit Bankruptcy Appellate Panel then
8 transferred the three cases (together, the "Bankruptcy Appeals") to this Court.

9 10. On October 30, 2008, AlphaMed filed an adversary complaint against Arriva
10 in the Bankruptcy Court.

11 11. On January 14, 2008, the Bankruptcy Court entered an order dismissing
12 AlphaMed's complaint with prejudice.

13 12. On January 23, 2008, AlphaMed appealed that order to the BAP, which
14 docketed the case at 08-1023.

15 13. Arriva then filed a Statement of Election pursuant to 28 U.S.C. §
16 158(c)(1)(B) and Bankruptcy Rule 8001(e)-1. As a result, on January 29, 2008, the BAP
17 transferred that case (the "Adversary Appeal") to this Court.

18 14. The Arriva Declaratory Relief Case, the Bankruptcy Appeals and the
19 Adversary Appeal involve the same parties. Arriva, plaintiff in the Arriva Declaratory
20 Relief Case, is debtor-appellee in the Bankruptcy Appeals. Meanwhile, Sonoran and PSI
21 were defendants in the Arriva Declaratory Relief Case, and now are claimants-appellants
22 in the Bankruptcy Appeals. Claimant-appellant AlphaMed, though not a party to the
23 Arriva Declaratory Relief Case, is controlled by the same principals as Sonoran and PSI
24 and asserts an interest in intellectual property that is identical to those asserted by Sonoran
25 and PSI. Moreover, AlphaMed is plaintiff-appellant in the Adversary Appeal.

26 15. The Arriva Declaratory Relief Case, the Bankruptcy Appeals and the
27 Adversary Appeal involve the same property. In the Arriva Declaratory Relief Case,
28 Arriva sought to establish its rights to certain intellectual property known as the

1 "Protease/Arriva license" or "Protease License." By the same token, in the Bankruptcy
2 Appeals, Sonoran, PSI and AlphaMed each challenge the Bankruptcy Court's disposition
3 of the very same issue, appealing the Bankruptcy Court's disallowance of their claims,
4 which are based, in part, on their alleged interests in the Protease/Arriva License.
5 Meanwhile, in the Adversary Appeal, AlphaMed makes an identical challenge to the
6 Bankruptcy Court's disposition of its claim to the Protease License.

7 16. The Arriva Declaratory Relief Case, the Bankruptcy Appeals and the
8 Adversary Appeal also involve the same legal issues. In the Arriva Declaratory Relief
9 Case, District Judge Illston dismissed Sonoran and PSI's counterclaims because principles
10 of federalism and comity, as manifest in the *Brillhart* doctrine, *Brillhart v. Excess Ins. Co.*,
11 316 U.S. 491 (1941), prevented her from adjudicating the dispute. An Arizona Superior
12 Court, District Judge Illston noted, already was considering the issues raised in the Arriva
13 Declaratory Relief Case. In addition, District Judge Illston noted the Arizona Superior
14 Court had issued injunctions forbidding Sonoran's principals from pursuing in court
15 Sonoran's purported rights to the Protease/Arriva License.

16 17. Meanwhile, the Bankruptcy Court relied on principles of federalism and
17 comity in disallowing the claims of AlphaMed. Specifically, the Bankruptcy Court held
18 that the *Rooker-Feldman* doctrine, *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544
19 U.S. 280 (2005), prohibited it from directly reviewing issues already adjudicated by the
20 Arizona Superior Court. In addition, the Bankruptcy Court disallowed Sonoran,
21 AlphaMed and PSI's claims against the bankruptcy estate because Sonoran and PSI's
22 principals could not assert their claims to the Protease/Arriva License without violating the
23 Arizona Court's injunctions.

24 18. The Bankruptcy Appeals and the Adversary Appeal are procedurally
25 complex. To date, the parties to the Bankruptcy Appeals and the Adversary Appeal have
26 litigated in the Southern District of Florida, Arizona State Court, Nevada State Court, the
27 Bankruptcy Court for the Northern District of California, as well as this Court—first
28

1 before United States District Judge Illston, and now with respect to the Bankruptcy
2 Appeals and the Adversary Appeal.

3 19. The Bankruptcy Appeals and the Adversary Appeal are also factually
4 complex. Sonoran, PSI and AlphaMed exist in relation to a myriad of affiliated entities
5 and their principals.

6 20. The docket of the Arriva Declaratory Relief Case and United States District
7 Judge Illston's most recent substantive order in that case both demonstrate United States
8 District Judge Illston is familiar with the parties, facts, legal issues and procedural history
9 implicated by these cases.

10 21. I have contacted claimants-appellants' counsel and have asked whether they
11 would stipulate that they were willing to proceed before United States District Judge
12 Illston. Claimants-appellants' counsel refused to so stipulate.

13
14 I declare under penalty of perjury under the laws of the United States of America
15 that the foregoing is true and correct. Executed on January 31, 2008, at San Francisco,
16 California.

17 _____
/s/ Michael H. Ahrens

18 MICHAEL H. AHRENS
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ARRIVA PHARMACEUTICALS, INC. fka
ALPHAONE PHARMACEUTICALS, INC., a
California corporation,

Plaintiff,

v.

SONORAN DESERT CHEMICALS, LLC, etc.,
et al.,

Defendants.

No. C 99-02169 SI

**ORDER GRANTING PLAINTIFF'S
MOTION TO DISMISS DEFENDANTS'
DECLARATORY RELIEF
COUNTERCLAIM, CONDITIONED
UPON PLAINTIFF'S DISMISSAL OF
CLAIMS**

AND RELATED COUNTERCLAIMS.

On June 23, 2006, the Court heard argument on plaintiff's motion to dismiss defendants' counterclaim for declaratory relief. Having considered the arguments of counsel and the papers submitted, and for good cause appearing, the Court hereby GRANTS plaintiff's motion for the reasons and on the conditions set forth below.

BACKGROUND¹

1. Parties and factual history

This action arises from a dispute between two former business partners, Dr. Allan Wachter ("Wachter"), a medical doctor, and defendant John Lezdey ("Lezdey"), a patent attorney. In the early

¹Much of the factual history appears in both parties' moving papers and are therefore assumed to be uncontested. Citations are therefore provided only when a fact is disputed or appears only in the filings of one party.

United States District Court

For the Northern District of California

1 1990s, Wachter and Lezdey invented and jointly acquired patents for medical technologies related to
2 the treatment of inflammation. In 1992, Wachter and Lezdey transferred their interests in the patents
3 to defendant Sonoran Desert Chemicals Limited ("Sonoran"). Sonoran is 50% owned by Wachter
4 through two holding companies, Nathan M. Technologies and Seth Chemicals, and 50% owned by
5 Lezdey, also through two holding companies, J.L. Technology LP and J & D Science, Inc.

6 Shortly after forming Sonoran, Wachter and Lezdey formed Protease Sciences, Inc. ("Protease")
7 and authorized Protease to serve as Sonoran's agent for, among other things, negotiating and entering
8 into licensing agreements on behalf of Sonoran. Protease was originally owned 50% by Wachter and
9 his family and 50% by Lezdey and his family. At the time, Wachter and Lezdey were Protease's sole
10 board members. The identity of Protease's current owners and board members is a matter of dispute
11 between Wachter and Lezdey. *See* Def. Counterclaim, ¶ 11; Decl. of Grant L. Kim In Support of
12 Arriva's Motion to Dismiss ("Kim Decl."), Ex. 23, at 5-19.

13 On April 16, 1998, Protease entered into a purported License Agreement with plaintiff Arriva
14 Pharmaceuticals, Inc. ("Arriva"),² then known as AlphaOne Pharmaceuticals, under which Protease
15 granted Arriva exclusive license to utilize the Sonoran patents in specified medical fields. Pl. Compl.
16 Ex.1. The validity of this Protease/Arriva license is the central disputed issue giving rise to this action.
17 Wachter alone signed the agreement on behalf of Protease, but Arriva contends that Lezdey advised and
18 approved the execution of the agreement. Pl. Compl. ¶ 13. Lezdey, on the other hand, alleges that the
19 agreement was unlawfully executed without his knowledge or consent. Def. Counterclaim ¶ 19.

20 At some point following the execution of the Protease/Arriva license, Arriva entered into a sub-
21 license with counter-Defendant Baxter Healthcare Corporation ("Baxter") that provided Baxter with
22 specified rights to the patents. The validity of this sub-license is also disputed by Lezdey. Def. Compl.
23 ¶ 23.

24 AlphaMed Pharmaceuticals ("AlphaMed") is the final relevant party to the dispute. AlphaMed
25 was formed by Lezdey and his family in 1999. In the same year, AlphaMed purportedly received a
26 license from Protease for its patents. Arriva alleges that the Protease/AlphaMed license is invalid and
27

28 ²Arriva is owned by Wachter, Lezdey and others.

1 violates the terms of the Protease/Arriva exclusive licensing agreement. Compl. ¶¶ 27-30.

2
3 **2. This action: Filing and stay**

4 After Lezdey allegedly questioned the validity of the Protease/Arriva license and the
5 Arriva/Baxter sub-license in discussions with Arriva's board members, potential investors and business
6 partners, Arriva and Wachter filed multiple lawsuits, including this action. In May 1999, Arriva filed
7 the complaint before this Court, naming seven defendants: Lezdey, Lezdey's two sons (Jarrett and
8 Darren Lezdey), Sonoran, Protease, and Lezdey's two holding companies, J&D Science and J.L.
9 Technology.³ Shortly after the filing of this complaint, Wachter filed his own complaint in Arizona state
10 court, raising similar issues and naming the same seven defendants plus Lezdey's wife, Noreen.

11 After this Court denied Arriva's motion for a temporary restraining order, the parties agreed to
12 a stay of this federal action, pending the outcome of the related Arizona case. In particular, the parties
13 noted that the Arizona court was adjudicating issues related to the ownership of Protease and to the
14 validity of actions taken by Protease with respect to Arriva, and that these issues could have a significant
15 impact on this action. Kim Decl., Ex. 3, Joint Case Management Statement of December 2, 1999, at 2.
16 The stay took effect in December 1999.

17
18 **3. Arizona court litigation: Preliminary injunction⁴**

19 In February 2000, the Arizona state court, following an evidentiary hearing attended by Lezdey,
20 issued a preliminary injunction that prohibited Lezdey, his sons or either of his two holding companies
21 from "acting or speaking, or purporting to act or speak, on behalf of Protease or Sonoran without
22 Plaintiffs' [Wachter's] consent." Kim Decl., Ex. 4, Preliminary Injunction of February 2, 2000, at 13.
23 The injunction also prohibited the defendants from contacting any of Arriva's potential business partners
24 and investors or otherwise interfering with Arriva's business operations. *Id.*

25
26 ³Arriva's complaint also includes employment-related causes of action against Lezdey's sons,
27 who subsequently filed counterclaims against Arriva. Issues related to these causes of action are not the
subject of this motion and are therefore not discussed.

28 ⁴This Court takes judicial notice of the Arizona court orders and pleadings.

1 More importantly for this matter, the Arizona court issued extensive Findings of Fact along with
2 its Order. These findings include:

- 3 • “Lezdey knew the material terms and conditions of the [Protease/Arriva] License
4 Agreement, advised Wachter that the Agreement was valid, and approved Wachter’s
5 execution thereof.” *Id.*, ¶ 41.
- 6 • The Protease/Arriva license is “valid and enforceable.” *Id.*, ¶ 61

7 In November 2000, the Arizona Superior Court added to its finding through an amendment to
8 the preliminary injunction. The court further found that the Protease/AlphaMed license was improperly
9 created and that John Lezdey had testified untruthfully in his deposition regarding the AlphaMed
10 license. Kim Decl., Ex.6, Amended Injunction, at 2-3. All other findings were confirmed. *Id.*

11 Lezdey and his sons did not appeal the Arizona court’s preliminary injunction.

12
13 **4. Arizona court litigation: Permanent injunction**

14 Following a series of delays, including an unsuccessful attempt by Lezdey to have the case
15 removed to a federal court in Arizona, a bench trial took place in January 2002. The trial was not
16 without its peculiarities. Despite repeated advance notice, neither Lezdey, his sons, his wife nor their
17 counsel attended the trial.⁵ In addition, in the month preceding the trial, the Arizona court had entered
18 a liability judgment against Lezdey’s sons as a sanction for their failure to appear for depositions. The
19 trial against Lezdey’s sons, therefore, was on the issue of damages only. Another factor complicating
20 the trial was Lezdey’s declaration of bankruptcy on the day immediately preceding the trial’s
21 commencement, thereby automatically staying the case against him. Notwithstanding these
22 complications, the court conducted a bench trial against Lezdey’s sons (on damages only), his wife
23 Noreen and J.L. Technology.⁶ The trial included multiple hours of witness testimony and the
24 introduction of almost 300 exhibits. Kim Reply Decl., Ex. A, Tierney Affidavit, ¶ 21.

25
26 ⁵Lezdey contends that ill health and financial difficulties prevented him and his family from
27 attending the trial. The Arizona court rejected this argument. Kim Decl., Ex. 15 at 5.

28 ⁶Lezdey’s other holding company, J & D Science, was not a party to the trial, having also filed
for bankruptcy in the week prior to trial.

1 On February 22, 2002, the Arizona Court issued a final judgment against Lezdey's sons and J.L.
2 Technology.⁷ In addition to awarding Wachter \$17.4 million in compensatory and punitive damages,
3 the court issued a permanent injunction against Lezdey's sons and J.L. Technology that mirrored its
4 preliminary injunction. Moreover, the court found that the Protease/Arriva license was "valid and
5 enforceable" and remained "fully in effect." Kim Decl., Ex. 8, Permanent Injunction, ¶¶ 38, 61. The
6 court further found that John Lezdey had violated his fiduciary duty to Wachter, Protease, Sonoran and
7 Arriva by, among other things, preparing false documents and improperly interfering with Arriva's
8 business operations and prospective business partners. Lastly, the court found the Protease/AlphaMed
9 license to be "wholly void and of no effect." *Id.*, ¶ 72.

10 Lezdey's sons and J.L. Technology unsuccessfully appealed the Arizona judgment and
11 permanent injunction.

12 Although the validity of the Protease/Arriva license would appear to have been decided in the
13 Arizona litigation, defendants argue that this Court should discount the Arizona court's ruling for two
14 primary reasons. First, as a result of the bankruptcy stay, John Lezdey was not a direct party to the
15 Arizona trial, the final judgment or the permanent injunction.⁸ Second, the judgment against Lezdey's
16 sons resulted from a discovery sanction and not from evidence produced at trial. For these reasons,
17 defendants assert that Lezdey and his sons have not had an adequate opportunity to litigate the license
18 issue.

19
20 **5. Arizona court litigation: Pending suit against John Lezdey**

21 In July 2002, the Bankruptcy Court lifted the automatic stay that had prevented Wachter from
22 pursuing his claims against Lezdey in the Arizona litigation. As a result of numerous postponements,
23 a trial date has yet to be determined. However, the Arizona court has scheduled a conference between
24 the parties and a newly assigned Superior Court judge on August 25, 2006 to schedule a trial date. The
25

26 ⁷The Arizona Superior Court also entered judgment against Lezdey's wife Noreen. This
27 judgment was vacated on appeal.

28 ⁸Lezdey was, however, indirectly a party to the trial and its result as a co-owner of J.L.
Technology LP.

1 parties' Pretrial Statement indicates that the validity of the Protease/Arriva license will once again be
2 a central issue.⁹ Kim Reply Decl., Ex. D, Joint Pretrial Statement, filed June 21, 2004, at 12 (xiv)-(xv),
3 19 (xv)-(xxii).

4
5 **6. Arizona court litigation: Contempt proceedings against John Lezdey**

6 Lezdey's relationship with the Arizona Superior Court has not been good. He has been held in
7 contempt of court on three separate occasions: first, in October 2000, for testifying untruthfully during
8 his deposition and refusing to appear at a later deposition; second, in February 2002, for willfully
9 violating the court's preliminary injunction by interfering with Arriva's business operations and acting
10 on behalf of Protease without Wachter's consent; and in September 2003, for failing to pay previously
11 imposed sanctions, for continuing to violate the preliminary injunction, and for repeatedly delaying the
12 Arizona action through bad faith procedural actions.

13 In its final contempt order, the Arizona court specifically found that Lezdey's filing of the
14 federal counterclaim in this case on behalf of Sonoran without Wachter's consent was a violation of the
15 preliminary injunction and has ordered Lezdey to dismiss the Sonoran counterclaim in this court.

16 The Arizona contempt proceedings had one additional and important outcome. In November
17 2004, as a sanction for Lezdey's continued disregard of the various contempt orders, the Arizona court
18 dismissed with prejudice all of Lezdey's counterclaims against Wachter in the Arizona litigation.
19 Lezdey and Sonoran rely heavily on this inability to bring a counterclaim in Arizona court in their
20 opposition to the motion under consideration here.

21
22 **7. Florida litigation: AlphaMed v. Arriva**

23 In 2003, AlphaMed, the company controlled by Lezdey and his sons, filed a tort suit against
24 Arriva in Florida federal court, claiming that Arriva had misappropriated trade secrets and engaged in
25 unfair competition. A trial resulted in a jury verdict in favor of AlphaMed. However, on May 26, 2006,
26 the Florida district court granted Arriva's motion for judgment as a matter of law. AlphaMed has filed

27
28 ⁹Whether Lezdey will be collaterally estopped from re-litigating the license validity issue is an open question.

1 a notice of appeal.

3 DISCUSSION

4 Arriva seeks an order dismissing the declaratory relief counterclaim by defendants Lezdey and
5 Sonoran, on the grounds that the central issue in the counterclaim - the validity of the Protease/Arriva
6 license - is the subject of ongoing litigation in an Arizona state court, and that this Court's involvement
7 is therefore duplicative and unnecessary. Arriva argues alternatively that defendant Sonoran's
8 counterclaim should be dismissed because Sonoran lacks capacity to assert the counterclaim without
9 Wachter's consent.¹⁰

11 1. Dismissal of Lezdey and Sonoran's counterclaim based on the *Brillhart* factors

12 Under the express terms of the Declaratory Judgment Act, the granting of declaratory relief by
13 a district court is discretionary. *See* 28 U.S.C.A. § 2201(a) (West 2006); *Cont'l Cas. Co. v. Robsac*
14 *Indus.*, 947 F.2d 1367, 1369 (9th Cir. 1991). Although a pending state action does not require a district
15 court to refuse declaratory relief jurisdiction, when the state action presents the same state law issues
16 as the federal action, "there exists a presumption that the entire suit should be heard in state court."
17 *Chamberlain v. Allstate Ins. Co.*, 931 F.2d 1361, 1366-67 (citing *Brillhart v. Excess Ins. Co.*, 316 U.S.
18 491, 495 (1942)).

19 Three primary factors govern a federal court's decision to grant declaratory relief jurisdiction
20 when a related action is pending in state court: (1) avoidance of duplicative litigation, (2) avoidance of
21 needlessly determining issues of state law, and (3) discouragement of forum shopping by either party.
22 *See Brillhart*, 316 U.S. at 495; *Robsac*, 947 F.2d at 1371; *Am. Nat'l Fire Ins. Co. v. Hungerford*, 53 F.3d
23 1012, 1016-19 (9th Cir. 1995), *overruled on other grounds*, *Gov't Employees Ins. v. Dizol*, 133 F.3d
24 1220, 1227 (9th Cir. 1998). An analysis of these factors may entail an inquiry into, among other
25 things, the scope of the state action, the availability of remedies and defenses, and the involvement of

27 ¹⁰Arriva represented in its moving papers that if the counterclaim is dismissed, Arriva will
28 withdraw its claims against Lezdey and Sonoran, as well as its claims against three related companies.
The discussion which follows is conditioned on Arriva's doing so.

1 necessary parties. *Brillhart*, 316 U.S. at 495.

2 Both parties agree that the validity of the Protease/Arriva license is “at the heart of this . . .
3 counterclaim for declaratory and injunctive relief.” Kim. Decl., Ex. 21, at 3. Plaintiff Arriva therefore
4 argues that, because the license’s validity has been and continues to be the subject of extensive litigation
5 in Arizona state court, retrying the issue in this Court would: (a) be duplicative and wasteful, (b) require
6 an unnecessary determination of state law, and (c) encourage defendant Lezdey’s bad faith efforts to
7 forum shop and otherwise disrupt the Arizona litigation. Defendants Lezdey and Sonoran counter by
8 arguing that the validity of the license has not been extensively litigated in Arizona, that this Court is
9 better suited to decide the issue and that Arriva is the party guilty of forum shopping.

10

11 **A. First *Brillhart* factor: Duplicative litigation of license validity**

12 The Court concludes that the Protease/Arriva license issue has already been extensively litigated
13 in the Arizona court, and that any litigation in this court would be duplicative. The license’s validity
14 was a specific finding in the court’s final judgment and permanent injunction against Lezdey’s sons and
15 J.L. Technology and in its preliminary injunction order against Lezdey. The preliminary injunction was
16 issued after a two-day evidentiary hearing in which both Lezdey and his counsel participated. The final
17 judgment and permanent injunction followed a bench trial that included multiple hours of testimony and
18 the introduction of almost 300 exhibits. Kim Reply Decl., Ex. A, Tierney Affidavit, ¶ 21. Moreover,
19 during the more than 7 years that the litigation has been pending in Arizona court, Lezdey and his
20 counsel have filed an answer and counterclaims, actively participated in discovery and submitted
21 numerous motions. Finally, to the extent that this history of litigation is insufficient, defendant Lezdey
22 will have the opportunity to once again litigate the license issue in the upcoming trial against him in
23 Arizona state court.

24 Defendants Lezdey and Sonoran argue that litigation of the license issue would not be
25 duplicative because plaintiff Arriva and counter-Defendant Baxter are not parties in the Arizona
26 litigation. However, the Ninth Circuit has held that dismissal of a federal declaratory relief claim may
27 be warranted even when the parties to a related state court proceeding are not identical to those in the
28 federal action. *See Am. Nat’l Fire Ins. Co. v. Hungerford*, 53 F.3d 1012, 1015 (9th Cir. 1995). This

1 is particularly true when the state court has already developed a factual record and/or will effectively
2 decide the issue about which declaratory relief is sought. *See id.* at 1017. In *Hungerford*, an insurance
3 company filed a federal claim against one of its customers seeking a declaration of non-coverage. *Id.*
4 at 1015. The insured was involved in a related state court proceeding that shared many of the
5 underlying facts with the federal action. *Id.* However, the insurance company was “not a party to [the
6 California state] action and could not, under California law, have been joined as a party or had the issue
7 of insurance coverage heard in the California proceeding.” *Id.* at 1016. Nonetheless, the Ninth Circuit
8 dismissed the insurance company’s declaratory relief claim. *Id.* at 1019. The court held that the state
9 court was a more suitable forum for the insurance company’s declaratory relief claim because the state
10 court had already developed an extensive factual record while the federal record was “barren.” *Id.* at
11 1017. Trying the insurance company’s claim in federal court would therefore “result in a waste of
12 federal resources at every level of the decision making process.” *Id.* at 1018; *see also McGraw-Edison*
13 *Co. v. Performed Line Products Co.*, 362 F.2d 339, 344-345 (9th Cir. 1966) (dismissing defendant’s
14 declaratory relief counterclaim on the grounds that the issue would be effectively decided in a related
15 Ohio District Court case even though defendant was not a party to the Ohio case and could not be bound
16 by its result).

17 With regard to the present action, the Arizona court has developed a much more extensive
18 factual record than this Court. The Arizona litigation has involved considerable discovery (in which
19 Lezdey and Sonoran have participated), multiple evidentiary hearings and a bench trial that resulted in
20 a lengthy findings of fact. The factual record before this Court is, on the other hand, essentially
21 “barren.” *See Hungerford*, 53 F.3d at 1017. In addition, as discussed previously, the Protease/Arriva
22 license issue will be decided by the Arizona court even though Arriva and Baxter are not party to the
23 Arizona proceedings. Defendants distinguish *Hungerford* by arguing that a key factor in the
24 *Hungerford* court’s dismissal was the availability of declaratory relief in state court. *See Hungerford*,
25 53 F.3d at 1018. While the defendants in this case have admittedly been barred from bringing a
26 declaratory relief claim in the Arizona court, the remedy’s unavailability is the result of defendant
27 Lezdey’s contemptuous acts, not as a result of a procedural hurdle. In striking Lezdey’s counterclaims,
28 Arizona Superior Court Judge Armstrong noted, “To protect and preserve the integrity of the judicial

1 system, Defendant [Lezdey] should not be permitted to press claims in the Court while openly defying
2 its authority.” Declaration of John C. Steele in Support of Lezdey and Sonoran’s Opposition (“Steele
3 Decl.”), Ex. C, Superior Court of Arizona Order, at 2. Lezdey has not appealed this decision.
4 Furthermore, Lezdey’s explanation for his behavior towards the Arizona court - that plaintiff Arriva and
5 Wachter are participating in a malicious scheme to bankrupt Lezdey and his family in which the Arizona
6 court is complicit - is unpersuasive. Def. Opposition at 7, 12.

7 Defendants also argue that, because the Arizona court’s judgment against Lezdey’s sons was the
8 result of a discovery sanction and not the result of evidence produced at trial, the license issue has not
9 actually been litigated in the Arizona court. This argument is flawed for two reasons. First, none of the
10 cases cited by either party requires that an issue have been *actually litigated* in state court. The cases
11 only require that the issue be the subject of *pending* state litigation. A well-developed factual record
12 in state court, not a final judgment, is the relevant factor. See *Hungerford*, 53 F.3d at 1016. Even
13 assuming that the defendants are correct and the rules of collateral estoppel will not prevent re-litigation
14 of the license’s validity in this Court or the Arizona court, the validity of the Protease/Arriva license will
15 be a main issue in the pending Arizona trial against John Lezdey. Second, although Lezdey’s sons were
16 the subject of the discovery sanction, another defendant in the 2002 Arizona trial and final judgment,
17 the Lezdey holding company J.L. Technology, had not been the subject of sanctions. The evidence
18 presented at trial was therefore necessary for a finding of its liability.

19 In summary, judicial economy would be best served by allowing the Arizona state court to
20 decide (to the extent it has not already decided) the Protease/Arriva license validity issue. The Arizona
21 court has already developed a factual record on the issue through a previous trial and related discovery
22 (in which defendants Lezdey and Sonoran have participated) and will continue to hear evidence and
23 argument on the issue in the upcoming trial of John Lezdey. Re-litigating the same issue in this Court
24 would therefore be unnecessarily duplicative.

25
26 **B. Second *Brillhart* factor: Unnecessary determination of state law**

27 The Court also concludes that comity between this Court and the Arizona Superior Court
28 warrants denial of jurisdiction. The Supreme Court in *Brillhart* instructed that “gratuitous interference

1 with the orderly and comprehensive disposition of a state court litigation should be avoided.” *Brillhart*,
2 316 U.S. at 495. In *Hungerford*, the Ninth Circuit noted that even if declaratory judgment would help
3 clarify the legal issue pending before a state court, “such clarification would only come at the cost of
4 increasing friction between state and federal courts, and would constitute an improper encroachment
5 on state court jurisdiction.” *Hungerford*, 53 F.3d at 1019. The court was particularly concerned about
6 the risk that the state and federal courts might reach different conclusions when interpreting the same
7 facts. *Id.* at 1019 n.7. In *McGraw-Edison*, the Ninth Circuit concluded that “it is well settled . . . that
8 a declaratory judgment may be refused . . . where it is being sought merely to determine issues which
9 are involved in a case already pending and can be properly disposed of therein.” *McGraw-Edison*, 362
10 F.2d at 343. Finally, where “the sole basis of [federal] jurisdiction is diversity of citizenship, the federal
11 interest is at its nadir.” *Robsac*, 947 F.2d at 1371.

12 Here, the sole basis for jurisdiction is diversity. Second, as in *Hungerford* and *McGraw-Edison*,
13 the license issue is one of state, not federal, law. Even if, as the defendants contend, the license issue
14 should be governed by California rather than Arizona law, it is nonetheless a state law issue. Third,
15 because the validity of the Protease/Arriva license was a direct finding of the Arizona court in the 2002
16 trial and will be an issue in the upcoming trial, there exists the risk that this Court’s ruling would
17 directly conflict with the Arizona court’s ruling. This is the precise risk that the *Hungerford* court
18 envisioned and consciously avoided. Finally, from a pragmatic standpoint, the fact that significant
19 discovery and fact-finding have taken place in the Arizona court and not in this Court makes the Arizona
20 court a more suitable forum for resolution of the license issue.

21
22 **C. Third *Brillhart* factor: Avoidance of forum shopping**

23 Finally, the Court finds that dismissal is warranted to avoid forum shopping by the defendants.
24 The parties agreed to stay this litigation to allow the Arizona suit to proceed; now, after obtaining
25 several adverse rulings in Arizona, defendants seek a more favorable forum. The Ninth Circuit has
26 discouraged such opportunistic maneuvering. *See Am. Casualty Co. v. Krieger*, 181 F.3d 1113, 1119
27 (9th Cir. 1999) (upholding district court’s granting of declaratory relief on the grounds that it helped
28 prevent the defendants, who had lost several motions in federal court, from “wiping the slate clean and

1 starting this litigation anew in state court on the eve of their federal court trial.”)

2 Defendant Lezdey has also been formally rebuked for forum shopping and other delay tactics
3 by multiple courts. The Arizona District Court sternly reprimanded and sanctioned Lezdey for
4 attempting a second removal of the state case to federal court. Kim Decl., Ex. 12 at 2:5. A Florida
5 Bankruptcy Court judge was equally direct; while dismissing a motion by Lezdey in 2003, Judge
6 Timothy Corcoran noted that “it appears that this motion is just one more attempt by the debtor [Lezdey]
7 to avoid or delay trial in the Arizona action by engaging in improper forum shopping . . . the debtor’s
8 conduct is even more egregious than was apparent in previous papers.” Kim Decl., Ex. 11, Order
9 Denying Debtor’s Motion for Temporary or Preliminary Relief, at 20. Finally, in the last of its three
10 contempt orders against Lezdey, the Arizona Superior Court specifically cited Lezdey’s repeated, bad
11 faith efforts to delay the Arizona trial through forum shopping. Kim Decl., Ex. 17, Order dated
12 September 10, 2003 at 2, ¶ 6.

13
14 **2. Dismissal of Sonoran’s counterclaim**

15 Arriva argues alternatively that Sonoran’s counterclaim should be dismissed on the grounds that,
16 by law, Sonoran lacks capacity to file the counterclaim because it does not have Wachter’s
17 authorization. This Court agrees.

18 Arriva argues that Sonoran, by the terms of its own Operating Agreement¹¹ and the rulings of
19 the Arizona court, can only lawfully bring a counterclaim with the consent of Dr. Wachter. This
20 authorization is, of course, lacking. The Sonoran Operating Agreement requires that Lezdey or Wachter
21 get the consent of the other before acting on behalf of Sonoran, provided that either party supplies
22 written notice that their consent is required. Kim Decl., Ex. 20, Sonoran Operating Agreement, at 3.1.
23 Arriva contends that Wachter provided Lezdey with the required written notice when he filed various
24 motions with the Arizona court requesting that Lezdey be prohibited from acting on behalf of Sonoran
25

26 ¹¹According to Federal Rule of Civil Procedure 17(b), Sonoran’s capacity to sue is governed by
27 Nevada law, the state of its incorporation. Under Nevada law, the decision to file a lawsuit must be
28 made by members of the company in proportion to their capital contribution unless the corporation’s
operating agreement provides an alternate procedure, as is the case here. Nev. Rev. Stat §§ 86.281 and
86.291.

1 without Wachter's consent. Arriva further argues that the Arizona court's preliminary injunction, which
2 specifically prohibited Lezdey from acting for Sonoran without Wachter's consent, created a second
3 legal obligation. This second obligation is reinforced by the fact that the Arizona court found Lezdey
4 to be in violation of the injunction when he filed this counterclaim on behalf of Sonoran - a decision that
5 Lezdey unsuccessfully attempted to appeal.

6 Defendants do not contest any of the above facts. Instead, defendants argue that this Court
7 implicitly rejected the lack of capacity argument when it granted defendants leave to file their
8 counterclaims. Providing leave to file a claim, however, is not a decision on that claim's merits. In fact,
9 in a later order denying Lezdey's request for a TRO prohibiting enforcement of the Arizona injunction,
10 this Court noted that its decision to allow the counterclaims "was not intended to, and did not, express
11 any opinion concerning the validity of the Arizona injunction then in place against Mr. Lezdey." Kim
12 Reply Decl., Ex. E, Order Filed October 17, 2003.

13 Since Lezdey and Sonoran do not contest the key facts presented by Arriva, this Court concludes
14 that Sonoran lacks the capacity to sue without Wachter's consent.

15 16 CONCLUSION

17 For the foregoing reasons and for good cause shown, the Court hereby GRANTS plaintiff's
18 motion to dismiss defendants' counterclaims for declaratory relief (Docket No. 129).¹² This dismissal
19 is conditioned upon plaintiff filing a dismissal without prejudice of its claims against Lezdey, Sonoran
20 and the remaining defendants other than Lezdey's sons Jarrett and Darren within 7 days of the filing
21 date of this Order. Following plaintiff's dismissal, the only claims remaining before this Court will be
22 Arriva's two employment-related causes of action against Darren and Jarrett Lezdey and Darren and
23 Jarrett Lezdey's counterclaims for back pay, breach of contract and other employment-related issues.
24 These remaining claims will be the subject of the parties' next case management conference, scheduled
25

26 ¹²Since defendants' request for injunctive relief is derivative of its declaratory relief claim, that
27 claim is likewise dismissed by this Order. *See Golden Eagle Ins. Co. v. Travelers Cos.*, 103 F.3d 750,
28 755 (holding that, when an action consists of a declaratory relief claim and a non-declaratory claim that
is "wholly dependent upon a favorable decision" on the declaratory claim, the entire action is one for
declaratory relief).

1 for July 28, 2006.

2

3 **IT IS SO ORDERED.**

4

5 Dated: July 5, 2006

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Susan Illston

SUSAN ILLSTON
United States District Judge

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ADRMOP, CLOSED, ICMS, ProSe

**U.S. District Court
California Northern District (San Francisco)
CIVIL DOCKET FOR CASE #: 3:99-cv-02169-SI**

Alphaone Pharmaceuti v. Sonoran Desert Chem, et al
Assigned to: Judge Susan Illston
Demand: \$0
Cause: 28:1332 Diversity-Property Damage

Date Filed: 05/10/1999
Date Terminated: 12/18/2006
Jury Demand: Both
Nature of Suit: 380 Personal Property:
Other
Jurisdiction: Diversity

Plaintiff

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Counter-defendant

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Trustee

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Chapter 7 Trustee for the Bankruptcy
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Counter-claimant

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V.

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TERMINATED: 03/28/2006
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*LEAD ATTORNEY**ATTORNEY TO BE NOTICED*

Date Filed	#	Docket Text
05/10/1999	1	COMPLAINT for Damages and Declaratory Relief ; Summons(es) issued; Fee status pd entered on 5/10/99 in the amount of \$ 150.00 (Receipt No. 3300893); jury demand [3:99-cv-02169] (cgd, COURT STAFF) (Entered: 05/14/1999)
05/11/1999	2	EX-PARTE APPLICATION before Judge Maxine M. Chesney by Plaintiff Alphaone Pharmaceuti for temporary restraining order [3:99-cv-02169] (cgd, COURT STAFF) (Entered: 05/14/1999)
05/11/1999	3	DECLARATION by Kurt E. Springmann on behalf of Plaintiff Alphaone Pharmaceuti re motion for temporary restraining order [2-1] [3:99-cv-02169] (cgd, COURT STAFF) (Entered: 05/14/1999)
05/11/1999	4	DECLARATION by Philip J. Barr on behalf of Plaintiff Alphaone Pharmaceuti re motion for temporary restraining order [2-1] [3:99-cv-02169] (cgd, COURT STAFF) (Entered: 05/14/1999)
05/11/1999	5	ORDER RE COURT PROCEDURE and SCHEDULE by Judge Maxine M. Chesney : Proof of service to be filed by 6/25/99 ; counsels' case management statement to be filed by 9/7/99 ; initial case management conference will be held 10:30 9/17/99 . (cc: all counsel) (cgd, COURT STAFF) (Entered: 05/14/1999)
05/11/1999	6	DECLARATION by Allan M. Wachter on behalf of Plaintiff Alphaone Pharmaceuti re motion for temporary restraining order [2-1] [3:99-cv-02169] (cgd, COURT STAFF) (Entered: 05/14/1999)
05/14/1999	7	RESPONSE by defendant John Lezdey re motion for temporary restraining order [2-1] [3:99-cv-02169] (ab, COURT STAFF) (Entered: 05/17/1999)
05/14/1999	8	DECLARATION by John Lezdey on behalf of defendant John Lezdey re response [7-1] [3:99-cv-02169] (ab, COURT STAFF) (Entered: 05/17/1999)
05/17/1999	9	MINUTES: (C/R Rosita Flores) (Hearing Date: 5/17/99) denying plaintiff's motion for temporary restraining order [2-1] [3:99-cv-02169] (ab, COURT STAFF) (Entered: 05/20/1999)
06/02/1999	10	RETURN OF SERVICE of summons and complaint executed upon

		defendants on 5/17, 5/22, 5/25 [3:99-cv-02169] (ab, COURT STAFF) (Entered: 06/03/1999)
06/10/1999	11	ANSWER by defendant Jarett Lezdey to complaint [1-1]; jury demand [3:99-cv-02169] (ab, COURT STAFF) (Entered: 06/15/1999)
06/14/1999	12	STIPULATION and ORDER by Judge Maxine M. Chesney : extending time to answer to 6/21/99 (cc: all counsel) [3:99-cv-02169] (ab, COURT STAFF) (Entered: 06/15/1999)
06/21/1999	13	ANSWER by defendant J.L. Technology L.P. to complaint [1-1] [3:99-cv-02169] (ab, COURT STAFF) (Entered: 06/22/1999)
06/21/1999	14	ANSWER by defendant J&D Science, Inc. to complaint [1-1] [3:99-cv-02169] (ab, COURT STAFF) (Entered: 06/22/1999)
06/21/1999	15	ANSWER by defendant Protease Sciences to complaint [1-1] [3:99-cv-02169] (ab, COURT STAFF) (Entered: 06/22/1999)
06/21/1999	16	ANSWER by defendant Sonoran Desert Chem to complaint [1-1] [3:99-cv-02169] (ab, COURT STAFF) (Entered: 06/22/1999)
06/21/1999	17	ANSWER by defendant John Lezdey to complaint [1-1] [3:99-cv-02169] (ab, COURT STAFF) (Entered: 06/22/1999)
06/21/1999	18	REPORTER'S TRANSCRIPT; Date of proceedings: 5/17/99 (C/R: Rosita Flores) minutes [9-1] [3:99-cv-02169] (ab, COURT STAFF) (Entered: 06/22/1999)
06/22/1999	19	ANSWER TO COUNTERCLAIM to defendant Darren Lezdey's counterclaim [3:99-cv-02169] (ab, COURT STAFF) (Entered: 06/23/1999)
06/22/1999	20	ANSWER TO COUNTERCLAIM to defendant Jarett Lezdey's counterclaim [3:99-cv-02169] (ab, COURT STAFF) (Entered: 06/23/1999)
08/11/1999	21	CLERK'S NOTICE Case Management Statement is due 9/17/99 ; Case Management Conference set for 10:30 9/24/99 [3:99-cv-02169] (ab, COURT STAFF) (Entered: 08/16/1999)
08/12/1999	22	STIPULATION and ORDER by Judge Maxine M. Chesney : Case Management Conference set for 12/10/99 (cc: all counsel) [3:99-cv-02169] (ab, COURT STAFF) (Entered: 08/19/1999)
12/02/1999	23	JOINT CASE MANAGEMENT STATEMENT and PROPOSED ORDER filed. [3:99-cv-02169] (ab, COURT STAFF) (Entered: 12/06/1999)
12/08/1999	24	STIPULATION and ORDER by Judge Maxine M. Chesney : Case

		Management Conference set for 3/24/00 ; Case Management Statement is due 3/17/00 (cc: all counsel) [3:99-cv-02169] (ab, COURT STAFF) (Entered: 12/10/1999)
03/20/2000	25	JOINT CASE MANAGEMENT STATEMENT and PROPOSED ORDER filed. [3:99-cv-02169] (ab, COURT STAFF) (Entered: 03/21/2000)
03/23/2000	26	STIPULATION and ORDER by Judge Maxine M. Chesney : Case Management Statement is due 9/15/00 ; Case Management Conference set for 9/22/00 (cc: all counsel) [3:99-cv-02169] (ab, COURT STAFF) (Entered: 03/27/2000)
09/12/2000	27	JOINT CASE MANAGEMENT STATEMENT and PROPOSED ORDER filed. [3:99-cv-02169] (ab, COURT STAFF) (Entered: 09/12/2000)
09/13/2000	28	STIPULATION and ORDER by Judge Maxine M. Chesney : Case Management Statement is due 1/26/00 ; Case Management Conference set for 2/2/01 (cc: all counsel) [3:99-cv-02169] (ab, COURT STAFF) (Entered: 09/14/2000)
01/31/2001	29	CASE MANAGEMENT STATEMENT and PROPOSED ORDER filed. [3:99-cv-02169] (ga, COURT STAFF) (Entered: 02/09/2001)
02/01/2001	31	STIPULATION and ORDER by Judge Maxine M. Chesney : vacating case management conference , further stay of litigation (cc: all counsel) [3:99-cv-02169] (ab, COURT STAFF) (Entered: 02/14/2001)
02/06/2001	30	MOTION before Judge Maxine M. Chesney by defendant Darren Lezdey for summary judgment unnoticed [3:99-cv-02169] (ab, COURT STAFF) (Entered: 02/14/2001)
03/05/2001	32	PROOF OF SERVICE by defendant Darren Lezdey of [3:99-cv-02169] (ga, COURT STAFF) (Entered: 03/16/2001)
03/09/2001	33	ORDER by Judge Maxine M. Chesney denying without prejudice motion for summary judgment [30-1] (Date Entered: 3/22/01) (cc: all counsel) [3:99-cv-02169] (ga, COURT STAFF) (Entered: 03/22/2001)
04/03/2001	34	MAIL [33-1] addressed to defendant Jarett Lezdey returned from Post Office [3:99-cv-02169] (ga, COURT STAFF) (Entered: 04/13/2001)
07/09/2001	35	JOINT CASE MANAGEMENT CONFERENCE STATEMENT filed. [3:99-cv-02169] (aaa, COURT STAFF) (Entered: 07/12/2001)
07/13/2001	36	MINUTES: (C/R none) (Hearing Date: 7/13/01) Court inquired

		about pending case in Arizona. Case Management Statement is due 2/1/02 ; Case Management Conference set for 10:30 2/8/02 ; [3:99-cv-02169] (aaa, COURT Staff) (Entered: 07/17/2001)
07/13/2001	37	STIPULATION and ORDER re further stay of litigation by Judge Maxine M. Chesney : (cc: all counsel) [3:99-cv-02169] (aaa, COURT Staff) (Entered: 07/17/2001)
02/01/2002	38	NOTICE OF BANKRUPTCY; DECLARATION OF JOHN LEZDEY by defendant J&D Science, Inc., defendant John Lezdey [3:99-cv-02169] (aaa, COURT Staff) (Entered: 02/04/2002)
02/01/2002	39	CASE MANAGEMENT STATEMENT filed. of defendant John Lezdey; J&D Sciences, Inc.; Sonoran Desert Chemicals, LLC; JL Technology, L.P., and Protease Sciences, Inc., [3:99-cv-02169] (aaa, COURT Staff) (Entered: 02/04/2002)
02/04/2002	40	PLAINTIFF'S CASE MANAGEMENT STATEMENT filed. [3:99-cv-02169] (aaa, COURT Staff) (Entered: 02/06/2002)
02/08/2002	41	MINUTES: (C/R None) (Further Case Management Conference (Held) Hearing Date: 2/8/02) Case Management Statement is due 7/5/02; Stay remains in effect ; Case Management Conference CONTINUED for 10:30 7/12/02 ; Plaintiff's counsel informed the Court that trial in Arizona was held and some of the defendants declared bankruptcy [3:99-cv-02169] (aaa, COURT Staff) (Entered: 02/12/2002)
07/05/2002	42	PLAINTIFF'S CASE MANAGEMENT STATEMENT and PROPOSED ORDER filed. [3:99-cv-02169] (aaa, COURT Staff) (Entered: 07/08/2002)
07/09/2002	43	PLAINTIFF'S CASE MANAGEMENT STATEMENT [3:99-cv-02169] (aaa, COURT Staff) (Entered: 07/11/2002)
01/03/2003	44	NOTICE by defendant Sonoran Desert Chem, defendant J.L. Technology L.P., defendant J&D Science, Inc., defendant John Lezdey, defendant Protease Sciences of association of attorney Douglas J. Rovens, Steven A. Lamb [3:99-cv-02169] (aaa, COURT Staff) (Entered: 01/06/2003)
01/03/2003	45	DEFENDANTS' CASE MANAGEMENT STATEMENT filed. [3:99-cv-02169] (aaa, COURT Staff) (Entered: 01/06/2003)
01/08/2003	46	PLAINTIFF'S CASE MANAGEMENT STATEMENT filed. [3:99-cv-02169] (aaa, COURT Staff) (Entered: 01/10/2003)
01/09/2003	47	DECLARATION by David C. Tierney on behalf of Plaintiff Alphaone Pharmaceuti IN CONJUNCTION WITH CASE MANAGEMENT CONFERENCE [3:99-cv-02169] (aaa, COURT

		Staff) (Entered: 01/10/2003)
01/09/2003	48	DECLARATION by Edwin G. Rice on behalf of Plaintiff Alphaone Pharmaceuti IN CONJUNCTION WITH CASE MANGEMENT CONFERENCE [3:99-cv-02169] (aaa, COURT Staff) (Entered: 01/10/2003)
01/10/2003	49	MINUTES: (C/R None) (Further Case Management Conference (Held) before the Honorable Maxine M. Chesney; Hearing Date: 1/10/03) Stay is lifted at all Defendant's Request pursuant to 2/1/01 stipulation and order. Joint Case Management Statement is due 3/21/03 ; Case Management Conference CONTINUED for 10:30 3/28/03 ; Defendant wants to file cross-complaints (and lift stay in case) [3:99-cv-02169] (aaa, COURT Staff) (Entered: 01/14/2003)
03/21/2003	50	JOINT CASE MANAGEMENT STATEMENT filed. [3:99-cv-02169] (aaa, COURT Staff) (Entered: 03/25/2003)
03/28/2003	51	MINUTES: (C/R None) (Further Case Management Conference (Held) by the Honorable Maxine M. Chesney; Hearing Date: 3/28/03) Court Directs Docket Clerk to "Unfile" Sonoran Desert Counterclaim & Delete Entry from Docket. Defendant Sonoran Desert is Directed to File a Motion to File Counterclaim. Joint Case Management Statement is due 7/18/03 ; Case Management Conference CONTINUED for 10:30 7/25/03 ; 5/30/03 Hearing in Phoenix Action [3:99-cv-02169] (aaa, COURT Staff) Modified on 04/01/2003 (Entered: 04/01/2003)
05/13/2003	52	NOTICE OF MOTION AND MOTION WITH MEMORANDUM OF POINTS AND AUTHORITIES before Judge Maxine M. Chesney by defendant Sonoran Desert Chem, defendant John Lezdey for leave to file Counterclaim; Declarations of John Lezdey and Douglas J. Rovens in Support Thereof with Notice set for 6/13/03 @ 9:00 a.m. [3:99-cv-02169] (aaa, COURT Staff) (Entered: 05/15/2003)
05/13/2003	53	NOTICE OF LODGING COUNTERCLAIM by defendant Sonoran Desert Chem, defendant J.L. Technology L.P., defendant J&D Science, Inc., defendant John Lezdey, defendant Jarett Lezdey, defendant Darren Lezdey, defendant Protease Sciences [3:99-cv-02169] (aaa, COURT Staff) (Entered: 05/15/2003)
05/19/2003	54	NOTICE of CONTINUING hearing by defendant Sonoran Desert Chem, defendant John Lezdey setting motion for leave to file Counterclaim; Declarations of John Lezdey and Douglas J. Rovens in Support Thereof [52-1] ; hearing set for 9:00 6/27/03 [3:99-cv-02169] (aaa, COURT Staff) (Entered: 05/21/2003)

06/06/2003	55	OPPOSITION by Plaintiff Alphaone Pharmaceuti to motion for leave to file Counterclaim; Declarations of John Lezdey and Douglas J. Rovens in Support Thereof [52-1] [3:99-cv-02169] (aaa, COURT Staff) (Entered: 06/10/2003)
06/06/2003	56	DECLARATION by Paul J. Riley on behalf of Plaintiff Alphaone Pharmaceuti re opposition to motion for leave to file counterclaim [55-1] [3:99-cv-02169] (aaa, COURT Staff) (Entered: 06/10/2003)
06/06/2003	57	PROOF OF SERVICE by Plaintiff Alphaone Pharmaceuti of declaration [56-1], opposition [55-1] [3:99-cv-02169] (aaa, COURT Staff) (Entered: 06/10/2003)
06/13/2003	58	REPLY BRIEF FILED by defendant Sonoran Desert Chem, defendant John Lezdey regarding motion for leave to file Counterclaim; Declarations of John Lezdey and Douglas J. Rovens in Support of Motion for Leave to File Counterclaim Thereof [52-1] [3:99-cv-02169] (aaa, COURT Staff) (Entered: 06/17/2003)
06/13/2003	59	DECLARATION by Douglass J. Rovens on behalf of defendant Sonoran Desert Chem, defendant John Lezdey re reply brief in support of motion for leave to file counterclaim [58-1] [3:99-cv-02169] (aaa, COURT Staff) (Entered: 06/17/2003)
06/13/2003	60	PROOF OF SERVICE by defendant Sonoran Desert Chem, defendant John Lezdey of declaration [59-1], brief [58-1] [3:99-cv-02169] (aaa, COURT Staff) (Entered: 06/17/2003)
06/18/2003	61	ORDER CONTINUING HEARING by Judge Maxine M. Chesney setting hearing on motion for leave to file Counterclaim; Declarations of John Lezdey and Douglas J. Rovens in Support Thereof [52-1] 9:00 7/25/03 (Date Entered: 6/24/03) (cc: all counsel) [3:99-cv-02169] (aaa, COURT Staff) (Entered: 06/24/2003)
06/19/2003	62	STATEMENT of RECENT DECISION IN FURTHER by Plaintiff Alphaone Pharmaceuti in further support of opposition to Defendant's Motion for Leave to File Counterclaim [55-1] [3:99-cv-02169] (aaa, COURT Staff) (Entered: 06/25/2003)
07/03/2003	63	STIPULATION and ORDER by Judge Maxine M. Chesney : setting hearing on motion for leave to file Counterclaim [52-1] for 9:00 a.m. on 8/15/03 Case Management Conference reset for 9:00 a.m. on 8/15/03 ; (cc: all counsel) [3:99-cv-02169] (rcs, COURT STAFF) (Entered: 07/08/2003)
07/03/2003	64	ORDER by Judge Maxine M. Chesney of recusal (Date Entered: 07/08/03) (cc: all counsel) [3:99-cv-02169] (rcs, COURT STAFF) (Entered: 07/08/2003)

07/07/2003	65	ORDER by Executive Committee Case reassigned to Judge Susan Illston; referred to Judge Susan Illston the motion for leave to file Counterclaim [52-1] (Date Entered: 07/08/03) (cc: all counsel) [3:99-cv-02169] (rcs, COURT STAFF) (Entered: 07/08/2003)
07/08/2003	66	CLERK'S NOTICE setting hearing on motion for leave to file Counterclaim; Declarations of John Lezdey and Douglas J. Rovens in Support Thereof [52-1] 9:00 8/15/03 Further Case Management Conference set for 2:30 10/3/03 ; A joint case management conference statement must be filed one week prior to the conference. [3:99-cv-02169] (ys, COURT STAFF) (Entered: 07/10/2003)
07/17/2003	68	MAIL [66-2] returned addressed to Jarett Lezdey from Post Office [3:99-cv-02169] (ys, COURT STAFF) (Entered: 08/01/2003)
07/18/2003	67	MAIL [66-2] addressed to Darren Lezdey returned from Post Office. Remaild to new addres. [3:99-cv-02169] (ys, COURT STAFF) (Entered: 07/18/2003)
07/21/2003	69	MAIL [65-2] addressed to defendant Jarett Lezdey returned from Post Office [3:99-cv-02169] (ys, COURT STAFF) (Entered: 08/01/2003)
08/14/2003	70	NOTICE of Change of Firm Name by defendants'counsels' firm to Rovens Lamb LLP. [3:99-cv-02169] (ys, COURT STAFF) (Entered: 08/15/2003)
08/19/2003	71	MINUTES: (C/R K. Wyatt) (Hearing Date: 8/15/03) granting motion for leave to file Counterclaim; Declarations of John Lezdey and Douglas J. Rovens in Support Thereof [52-1]. The case shall be stayed pending until the case management conference scheduled in October 2003. [3:99-cv-02169] (ys, COURT STAFF) (Entered: 08/19/2003)
08/19/2003	72	ORDER by Judge Susan Illston granting motion for leave to file Counterclaim; Declarations of John Lezdey and Douglas J. Rovens in Support Thereof [52-1]. After the counterclaim has been filed with the Court, the action will be stayed pending the October 3, 2003 case management conference, at which time the Court will evaluate whether the stay should be lifted. (Date Entered: 8/20/03) (cc: all counsel) [3:99-cv-02169] (ys, COURT STAFF) (Entered: 08/20/2003)
08/29/2003	73	AMENDED ANSWER by defendant Sonoran Desert Chem, defendant John Lezdey [3:99-cv-02169] (ys, COURT STAFF) (Entered: 09/04/2003)
08/29/2003	74	COUNTERCLAIM; jury demand by defendant Sonoran Desert

		Chem, defendant John Lezdey against Plaintiff Alphaone Pharmaceuti [3:99-cv-02169] (ys, COURT STAFF) (Entered: 09/04/2003)
09/02/2003	75	MAIL [72-1] addressed to Jarett lezdey returned from Post Office [3:99-cv-02169] (ys, COURT STAFF) (Entered: 09/04/2003)
09/05/2003	76	PROOF OF SERVICE by defendant Sonoran Desert Chem, defendant J.L. Technology L.P., defendant J&D Science, Inc., defendant Protease Sciences of order [72-1], clerk notice [66-2] [3:99-cv-02169] (ys, COURT STAFF) (Entered: 09/08/2003)
09/15/2003	77	PROOF OF SERVICE by defendants of Summons and Complaint on Baxter Healthcare Corporation. [3:99-cv-02169] (ys, COURT STAFF) (Entered: 09/15/2003)
09/22/2003	78	JOINT CASE MANAGEMENT STATEMENT and PROPOSED ORDER filed. [3:99-cv-02169] (ys, COURT STAFF) (Entered: 09/23/2003)
09/30/2003	79	EX-PARTE APPLICATION before Judge Susan Illston by defendant Sonoran Desert Chem, defendant John Lezdey, defendant Protease Sciences, defendant J&D Science, Inc., defendant J.L. Technology L.P. for temporary restraining order , and for order to show cause or other appropriate relief directing the Arizona Superior Court for Maricopa County (the Honorable Paul A. Katz) to show cause why its contempt order, dated September 10, 2003, dismissing the counterclaim in this action (and other illegal orders) should not be enjoined. [3:99-cv-02169] (ys, COURT STAFF) (Entered: 10/01/2003)
09/30/2003	80	MEMORANDUM of Points and Authorities by defendant Sonoran Desert Chem, defendant J.L. Technology L.P., defendant J&D Science, Inc., defendant John Lezdey, defendant Protease Sciences in support of motion for temporary restraining order [79-1], of motion for order to show cause [79-2]; declarations of John Lezdey and Douglas J. Rovens in support thereof. [3:99-cv-02169] (ys, COURT STAFF) (Entered: 10/01/2003)
09/30/2003		RECEIVED Proposed Order (defendant Sonoran Desert Chem, defendant J.L. Technology L.P., defendant J&D Science, Inc., defendant John Lezdey, defendant Protease Sciences) re: motion for temporary restraining order [79-1], re: motion for order to show cause [79-2] [3:99-cv-02169] (ys, COURT STAFF) (Entered: 10/01/2003)
09/30/2003	81	PROOF OF SERVICE by defendant Sonoran Desert Chem, defendant J.L. Technology L.P., defendant J&D Science, Inc.,

		defendant John Lezdey, defendant Protease Sciences of memorandum [80-1], motion for temporary restraining order [79-1], motion for order to show cause [79-2], proposed order. [3:99-cv-02169] (ys, COURT STAFF) (Entered: 10/01/2003)
10/02/2003	82	Preliminary Memorandum in RESPONSE by Plaintiff Alphaone Pharmaceuti re motion for temporary restraining order [79-1] [3:99-cv-02169] (ys, COURT STAFF) (Entered: 10/03/2003)
10/02/2003	83	PROOF OF SERVICE on Honorable Paul A. Katz by Plaintiff Alphaone Pharmaceuti of motion for temporary restraining order [79-1], motion for order to show cause [79-2] [3:99-cv-02169] (ys, COURT STAFF) (Entered: 10/03/2003)
10/07/2003	84	ORDER by Judge Susan Illston denying motion for temporary restraining order [79-1], denying motion for order to show cause [79-2]. Stay in this action is continued until April 16, 2004. (Date Entered: 10/8/03) (cc: all counsel) [3:99-cv-02169] (ys, COURT STAFF) (Entered: 10/08/2003)
10/07/2003	85	MINUTES: (C/R None) Further Case Management Conference HELD (Hearing Date: 10/3/03) Further Case Management Conference set for 2:30 4/16/04 ; The Court is not inclined to grant the motion for temporary restraining order. The stay imposed on this case shall remain in effect until April 16, 2004. [3:99-cv-02169] (ys, COURT STAFF) (Entered: 10/08/2003)
10/23/2003	86	MAIL [84-1] addressed to Jarett Lezdey returned from Post Office [3:99-cv-02169] (ys, COURT STAFF) (Entered: 10/28/2003)
04/02/2004	87	JOINT CASE MANAGEMENT STATEMENT and PROPOSED ORDER filed. [3:99-cv-02169] (ys, COURT STAFF) (Entered: 04/02/2004)
04/14/2004		RECEIVED Joint Stipulation and proposed order for continuance of the case management conference submitted by Plaintiff, defendant [3:99-cv-02169] (ys, COURT STAFF) (Entered: 04/14/2004)
04/15/2004	88	JOINT STIPULATION and ORDER by Judge Susan Illston : Further Case Management Conference set for 2:30 6/25/04 ; (cc: all counsel) [3:99-cv-02169] (ys, COURT STAFF) (Entered: 04/15/2004)
04/16/2004	89	NOTICE of Entry of Order by Plaintiff, defendant [88-2] order [3:99-cv-02169] (ys, COURT STAFF) (Entered: 04/19/2004)
06/10/2004		RECEIVED Joint stipulation and proposed order for continuance of the case management conference submitted by Plaintiff, defendants. [3:99-cv-02169] (ys, COURT STAFF) (Entered: 06/14/2004)

06/15/2004	90	STIPULATION and ORDER by Judge Susan Illston : for continuance of the case management conference Case Management Conference set for 2:30 7/23/04 subject to the parties seeking an earlier case management conference; (cc: all counsel) [3:99-cv-02169] (ys, COURT STAFF) (Entered: 06/16/2004)
07/02/2004	91	MAIL [90-2] addressed to defendant Jarett Lezdey returned from Post Office [3:99-cv-02169] (ys, COURT STAFF) (Entered: 07/07/2004)
07/13/2004	92	JOINT CASE MANAGEMENT STATEMENT and PROPOSED ORDER filed. [3:99-cv-02169] (ys, COURT STAFF) (Entered: 07/13/2004)
07/21/2004	93	NOTICE by defendant Sonoran Desert Chem, defendant J.L. Technology L.P., defendant J&D Science, Inc., defendant John Lezdey, defendant Protease Sciences of change of address [3:99-cv-02169] (ys, COURT STAFF) (Entered: 07/23/2004)
07/30/2004	94	MINUTES: (C/R None) Further case management conference HELD (Hearing Date: 7/23/04) Further Case Management Conference set for 2:30 9/10/04 ; This case shall be stayed until 9/8/04. [3:99-cv-02169] (ys, COURT STAFF) (Entered: 08/03/2004)
08/27/2004		RECEIVED Joint Request and Proposed order for continuance of the case management conference submitted by Plaintiff, defendant [3:99-cv-02169] (ys, COURT STAFF) (Entered: 08/30/2004)
08/31/2004	95	ORDER by Judge Susan Illston : Continuance of Case Management Conference set for 2:30 10/29/04 ; (Date Entered: 9/2/04) (cc: all counsel) [3:99-cv-02169] (ys, COURT STAFF) (Entered: 09/02/2004)
10/13/2004	96	CLERK'S NOTICE Further Case Management Conference set for 2:30 11/16/04 ; [3:99-cv-02169] (ys, COURT STAFF) (Entered: 10/18/2004)
11/08/2004	98	MAIL [96-2] addressed to Jarett Lezdey, Esq. returned from Post Office [3:99-cv-02169] (ys, COURT STAFF) (Entered: 11/16/2004)
11/12/2004	97	JOINT CASE MANAGEMENT STATEMENT and PROPOSED ORDER filed. [3:99-cv-02169] (ys, COURT STAFF) (Entered: 11/12/2004)
11/16/2004		RECEIVED Joint Stipulation and Proposed Order for continuance of the case management conference submitted by Plaintiff, defendant [3:99-cv-02169] (ys, COURT STAFF) (Entered: 11/16/2004)

		11/16/2004)
11/17/2004	99	STIPULATION and ORDER for continuance of the Case management conference by Judge Susan Illston : Case Management Conference set for 2:30 1/14/05 ; (cc: all counsel) [3:99-cv-02169] (ys, COURT STAFF) (Entered: 11/18/2004)
12/10/2004	100	REPORTER'S TRANSCRIPT; Date of proceedings: 8/15/03 (C/R: Katherine Wyatt) minutes [71-1] [3:99-cv-02169] (ys, COURT STAFF) (Entered: 12/10/2004)
01/06/2005		RECEIVED Joint Stipulation and proposed for continuance of the case management conference submitted by Plaintiff, defendant [3:99-cv-02169] (ys, COURT STAFF) (Entered: 01/06/2005)
01/10/2005	101	JOINT STIPULATION and ORDER by Judge Susan Illston : Case Management Conference set for 2:30 6/10/05 ; (cc: all counsel) [3:99-cv-02169] (ys, COURT STAFF) (Entered: 01/11/2005)
06/03/2005	102	NOTICE OF MOTION AND MOTION WITH MEMORANDUM OF POINTS AND AUTHORITIES ; declaration of Douglas J. Rovens before Judge Susan Illston by defendant Jarett Lezdey, defendant Darren Lezdey for order lifting stay and referrin gcase to bankruptcy court with Notice set for 6/10/05 at 2:30 pm. [3:99-cv-02169] (hdj, COURT STAFF) (Entered: 06/07/2005)
06/03/2005	103	EX-PARTE APPLICATION before Judge Susan Illston by defendant Jarett Lezdey, defendant Darren Lezdey for order shortening time to file motion for order lifting stay [3:99-cv-02169] (hdj, COURT STAFF) (Entered: 06/07/2005)
06/03/2005		RECEIVED Proposed Order (defendant Jarett Lezdey, defendant Darren Lezdey) re: motion for order shortening time to file motion for order lifting stay [103-1] [3:99-cv-02169] (hdj, COURT STAFF) (Entered: 06/07/2005)
06/06/2005	104	MEMORANDUM by Plaintiff Alphaone Pharmaceuti in opposition to motion for order shortening time to file motion for order lifting stay [103-1], motion for order lifting stay and referrin gcase to bankruptcy court [102-1] [3:99-cv-02169] (hdj, COURT STAFF) (Entered: 06/07/2005)
06/06/2005		RECEIVED Proposed Order for Continuance of the Case Management Conference (Plaintiff Alphaone Pharmaceuti) [3:99-cv-02169] (hdj, COURT STAFF) (Entered: 06/07/2005)
06/06/2005	105	RESPONSE by Counter-defendant Baxter Healthcare re motion for order shortening time to file motion for order lifting stay [103-1] [3:99-cv-02169] (hdj, COURT STAFF) (Entered: 06/09/2005)

06/07/2005	106	REPLY by defendant Jarett Lezdey, defendant Darren Lezdey re application for order shortening time to file motion for order lifting stay [103-1] [3:99-cv-02169] (cb, COURT STAFF) (Entered: 06/14/2005)
06/13/2005	107	MINUTES: (C/R None) (Hearing Date: 6/10/05) Further Case Management Conference set for 2:30 10/7/05 ; [3:99-cv-02169] (hdj, COURT STAFF) (Entered: 06/15/2005)
06/13/2005	108	ORDER by Judge Susan Illston Case Management Conference set for 2:30 10/7/05 ; (Date Entered: 6/16/05) (cc: all counsel) [3:99-cv-02169] (ys, COURT STAFF) (Entered: 06/16/2005)
07/11/2005	109	NOTICE by defendant Sonoran Desert Chem, defendant John Lezdey, Counter-claimant Sonoran Desert Chem, Counter-claimant John Lezdey of change of address [3:99-cv-02169] (ys, COURT STAFF) (Entered: 07/12/2005)
08/18/2005	110	Certificate/PROOF OF SERVICE of Clerk's Notice re continuance of case management conference to 10/17/05 at 2:30 p.m.. [3:99-cv-02169] (ys, COURT STAFF) (Entered: 08/19/2005)
08/18/2005		Docket Modification (Administrative) to service [110-1] Case Management Conference set for 2:30 10/17/05 ; [3:99-cv-02169] (ys, COURT STAFF) (Entered: 08/19/2005)
08/30/2005	111	MAIL [110-1] addressed to Jarett Lezdey returned from Post Office [3:99-cv-02169] (ys, COURT STAFF) (Entered: 08/31/2005)
10/06/2005	112	STIPULATION and ORDER by Judge Susan Illston : continuing Case Management Conference set for 2:30 12/2/05 ; (cc: all counsel) [3:99-cv-02169] (ys, COURT STAFF) (Entered: 10/07/2005)
10/24/2005	113	Amended CLERK'S NOTICE Case Management Conference set for 9:00 12/1/05 ; [3:99-cv-02169] (ys, COURT STAFF) (Entered: 10/25/2005)
11/03/2005	114	Mail Returned as Undeliverable re <u>113</u> . Mail sent to Kurt E. Springmann, Michael A. Jacobs. (ys, COURT STAFF) (Filed on 11/3/2005) (Entered: 11/07/2005)
11/09/2005		Joint Stipulation and proposed order for continuance of the case management conference by parties. (ys, COURT STAFF) (Filed on 11/9/2005) (Entered: 11/10/2005)
11/14/2005	115	STIPULATION AND ORDER for Continuance of the case management conference to 12/19/05 at 10:30 a.m.. Signed by Judge Susan Illston on 11/10/05. (ys, COURT STAFF) (Filed on 11/14/2005) (Entered: 11/14/2005)

11/14/2005		Set Deadlines/Hearings: Case Management Conference set for 12/19/2005 10:30 AM. (ys, COURT STAFF) (Filed on 11/14/2005) (Entered: 11/14/2005)
12/05/2005	116	Mail Returned as Undeliverable re <u>113</u> . Mail sent to Jarett Lezdey. (ys, COURT STAFF) (Filed on 12/5/2005) (Entered: 12/06/2005)
12/07/2005		Joint Stipulation and Proposed Order for Continuance of the Case Management Conference by parties. (ys, COURT STAFF) (Filed on 12/7/2005) (Entered: 12/08/2005)
12/08/2005	117	JOINT STIPULATION AND ORDER for Continuance of the Case Management Conference to 2/10/05 at 2:30 p.m.. Signed by Judge Susan Illston on 12/7/05. (ys, COURT STAFF) (Filed on 12/8/2005) (Entered: 12/12/2005)
12/08/2005		Set Deadlines/Hearings: Case Management Conference set for 2/10/2006 02:30 PM. (ys, COURT STAFF) (Filed on 12/8/2005) (Entered: 12/12/2005)
01/23/2006	118	CERTIFICATE OF SERVICE of Notice re continuance of case management conference to 2/24/06 at 2:30 p.m.. (ys, COURT STAFF) (Filed on 1/23/2006) (Entered: 01/24/2006)
01/23/2006		Set Deadlines/Hearings: Further Case Management Conference set for 2/24/2006 02:30 PM. (ys, COURT STAFF) (Filed on 1/23/2006) (Entered: 01/24/2006)
02/13/2006	119	JOINT CASE MANAGEMENT STATEMENT. (ys, COURT STAFF) (Filed on 2/13/2006) (Entered: 02/13/2006)
03/02/2006	120	Minute Entry: Further Case Management Conference held on 2/24/2006 before Susan Illston (Date Filed: 3/2/2006). Further case management conference set for 3/24/06 at 2:30 p.m.. The Court lifted the stay that was previously imposed on this case. "Baxter" shall file its response within 30 days. (Court Reporter None.) (ys, COURT STAFF) (Date Filed: 3/2/2006) (Entered: 03/02/2006)
03/02/2006		Set Deadlines/Hearings: Further Case Management Conference set for 3/24/2006 02:30 PM. (ys, COURT STAFF) (Filed on 3/2/2006) (Entered: 03/02/2006)
03/02/2006	<u>121</u>	ORDER: This case shall be referred to the Court's E.Filing (ECF) Program. All filings shall be made in compliance with General Order 45. Signed by Judge Susan Illston on 3/1/06. (ys, COURT STAFF) (Filed on 3/2/2006) (Entered: 03/03/2006)
03/03/2006	122	Mail Returned re <u>118</u> as Undeliverable. Mail sent to Jarett Lezdey. (ys, COURT STAFF) (Filed on 3/3/2006) (Entered: 03/07/2006)

03/17/2006	<u>123</u>	STIPULATION <i>JOINT STIPULATION AND [PROPOSED] ORDER REGARDING CASE MANAGEMENT CONFERENCE AND RESPONSE TO COUNTERCLAIM</i> by Alphaone Pharmaceuticals, Inc.. (Kim, Grant) (Filed on 3/17/2006) (Entered: 03/17/2006)
03/21/2006	<u>124</u>	ORDER ; case management continued to 4/14/06. Signed by Judge Illston on 3/20/06. (ts, COURT STAFF) (Filed on 3/21/2006) (Entered: 03/21/2006)
03/21/2006		Set Deadlines/Hearings: Case Management Conference set for 4/14/2006 02:30 PM. (ys, COURT STAFF) (Filed on 3/21/2006) (Entered: 03/22/2006)
03/28/2006	<u>125</u>	NOTICE of Change In Counsel by Grant L. Kim <i>Notice of Substitution of Counsel</i> (Kim, Grant) (Filed on 3/28/2006) (Entered: 03/28/2006)
04/06/2006	<u>126</u>	STIPULATION <i>Joint Stipulation and [Proposed] Order Regarding Case Management Conference and Response to Counterclaim</i> by Alphaone Pharmaceuticals, Inc.. (Kim, Grant) (Filed on 4/6/2006) (Entered: 04/06/2006)
04/06/2006	<u>127</u>	CERTIFICATE OF SERVICE by Alphaone Pharmaceuticals, Inc. <i>Proof of Service of Joint Stipulation and [Proposed] Order Regarding Case Management Conference and Response to Counterclaim</i> (Kim, Grant) (Filed on 4/6/2006) (Entered: 04/06/2006)
04/12/2006	<u>128</u>	ORDER continuing case management to 5/12/06 @ 2:30 p.m.. Signed by Judge Illston on 4/10/06. (ts, COURT STAFF) (Filed on 4/12/2006) (Entered: 04/12/2006)
04/12/2006		Set Deadlines/Hearings: Case Management Conference set for 5/12/2006 02:30 PM. (ys, COURT STAFF) (Filed on 4/12/2006) (Entered: 04/13/2006)
04/14/2006	<u>129</u>	MOTION to Dismiss <i>Arriva Pharmaceutical's Motion to Dismiss Declaratory Relief Counterclaim of Defendants Sonoran Desert Chemicals, LLC and John Lezdey</i> filed by Alphaone Pharmaceuticals, Inc.. Motion Hearing set for 5/12/2006 09:00 AM in Courtroom 10, 19th Floor, San Francisco. (Attachments: # <u>1</u> Proposed Order)(Kim, Grant) (Filed on 4/14/2006) (Entered: 04/14/2006)
04/14/2006	<u>130</u>	Declaration of Grant L. Kim in Support of <u>129</u> MOTION to Dismiss <i>Arriva Pharmaceutical's Motion to Dismiss Declaratory Relief Counterclaim of Defendants Sonoran Desert Chemicals, LLC and John Lezdey</i> filed by Alphaone Pharmaceuticals, Inc..

		(Attachments: # <u>1</u> Exhibit 1# <u>2</u> Exhibit 2# <u>3</u> Exhibit 3# <u>4</u> Exhibit 4# <u>5</u> Exhibit 5# <u>6</u> Exhibit 6# <u>7</u> Exhibit 7# <u>8</u> Exhibit 8# <u>9</u> Exhibit 9# <u>10</u> Exhibit 10# <u>11</u> Exhibit 11# <u>12</u> Exhibit 12# <u>13</u> Exhibit 13# <u>14</u> Exhibit 14# <u>15</u> Exhibit 15# <u>16</u> Exhibit 16# <u>17</u> Exhibit 17# <u>18</u> Exhibit 18# <u>19</u> Exhibit 19# <u>20</u> Exhibit 20# <u>21</u> Exhibit 21# <u>22</u> Exhibit 22# <u>23</u> Exhibit 23# <u>24</u> Exhibit 24)(Related document(s) <u>129</u>) (Kim, Grant) (Filed on 4/14/2006) (Entered: 04/14/2006)
04/14/2006	<u>131</u>	CERTIFICATE OF SERVICE by Alphaone Pharmaceuticals, Inc. re <u>129</u> MOTION to Dismiss <i>Arriva Pharmaceutical's Motion to Dismiss Declaratory Relief Counterclaim of Defendants Sonoran Desert Chemicals, LLC and John Lezdey</i> , <u>130</u> Declaration in Support,, (Kim, Grant) (Filed on 4/14/2006) (Entered: 04/14/2006)
04/27/2006	<u>132</u>	CLERK'S NOTICE Continuing Motion Hearing Motion Hearing set for 6/9/2006 09:00 AM. (ts, COURT STAFF) (Filed on 4/27/2006) (Entered: 04/27/2006)
05/04/2006	<u>133</u>	STIPULATION <i>Joint Stipulation and [Proposed] Order Regarding Case Management Conference</i> by Alphaone Pharmaceuticals, Inc.. (Kim, Grant) (Filed on 5/4/2006) (Entered: 05/04/2006)
05/04/2006	<u>134</u>	CERTIFICATE OF SERVICE of <u>133</u> by Alphaone Pharmaceuticals, Inc. (Kim, Grant) (Filed on 5/4/2006) Modified on 5/5/2006 (ys, COURT STAFF). (Entered: 05/04/2006)
05/05/2006	<u>135</u>	CERTIFICATE OF SERVICE by Alphaone Pharmaceuticals, Inc. <i>Amended Proof of Service on Jarett Lezdey</i> (Kim, Grant) (Filed on 5/5/2006) (Entered: 05/05/2006)
05/11/2006	<u>136</u>	ORDER continuing case management conference to 6/9/06. Signed by Judge Illston on 5/11/06. (ts, COURT STAFF) (Filed on 5/11/2006) (Entered: 05/11/2006)
05/17/2006	<u>137</u>	Memorandum in Opposition to <u>129</u> <i>Arriva Pharmaceuticals, Inc. and Baxter Healthcare Corporations' Motion to Dismiss counterclaim</i> filed by John Lezdey. (Steele, John) (Filed on 5/17/2006) Modified on 5/18/2006 (ys, COURT STAFF). (Entered: 05/17/2006)
05/17/2006	<u>138</u>	Declaration of John Steele in Support of <u>137</u> Memorandum in Opposition to <i>Arriva Pharmaceuticals, Inc. and Baxter Healthcare Corporations' Motion to Dismiss Counterclaim</i> filed by John Lezdey. (Attachments: # <u>1</u> Exhibit A-G)(Related document(s) <u>137</u>) (Steele, John) (Filed on 5/17/2006) (Entered: 05/17/2006)
05/17/2006	<u>139</u>	CERTIFICATE OF SERVICE by John Lezdey re <u>137</u> Memorandum in Opposition to <i>Arriva Pharmaceuticals, Inc. and Baxter Healthcare Corporations' Motion to Dismiss Counterclaim</i>

		<i>and 138 Declaration of John C. Steele in Support of Lezdey and Sonoran's Opposition to Arriva Pharmaceuticals, Inc. and Baxter Healthcare Corp.'s Motion to Dismiss Counterclaim (Steele, John) (Filed on 5/17/2006) Modified on 5/18/2006 (ys, COURT STAFF). (Entered: 05/17/2006)</i>
05/26/2006	<u>140</u>	Reply in support re <u>129</u> MOTION to Dismiss <i>Arriva Pharmaceutical's Motion to Dismiss Declaratory Relief Counterclaim of Defendants Sonoran Desert Chemicals, LLC and John Lezdey</i> filed by Alphaone Pharmaceuticals, Inc.. (Kim, Grant) (Filed on 5/26/2006) Modified on 5/30/2006 (ys, COURT STAFF). (Entered: 05/26/2006)
05/26/2006	<u>141</u>	Reply Declaration of Grant L. Kim <i>In Support of 129 Arriva Pharmaceutical's Motion to Dismiss Declaratory Relief Counterlcaim of Defendants Sonoran Desert Chemicals, LLC and John Lezdey</i> filed by Alphaone Pharmaceuticals, Inc.. (Attachments: # <u>1</u> Exhibit Exhibit A to Grant L. Kim Decl.# <u>2</u> Exhibit Exhibit B to Grant L. Kim decl.# <u>3</u> Exhibit Exhibit C to Grant L. Kim decl.# <u>4</u> Exhibit Exhibit D to Grant L. Kim decl.# <u>5</u> Exhibit Exhibit E to Grant L. Kim decl.)(Kim, Grant) (Filed on 5/26/2006) Modified on 5/30/2006 (ys, COURT STAFF). (Entered: 05/26/2006)
05/26/2006	<u>142</u>	CERTIFICATE OF SERVICE by Alphaone Pharmaceuticals, Inc. re <u>140</u> Reply to Opposition,, <u>141</u> Declaration in Support,, (Kim, Grant) (Filed on 5/26/2006) (Entered: 05/26/2006)
05/30/2006	<u>143</u>	CLERK'S NOTICE Continuing Motion Hearing Motion Hearing set for 6/23/2006 09:00 AM. Case management conference set 6/23/06 @ 2:30 p.m. (ts, COURT STAFF) (Filed on 5/30/2006) (Entered: 05/30/2006)
05/30/2006		Set Deadlines/Hearings: Case Management Conference set for 6/23/2006 02:30 PM. (ys, COURT STAFF) (Filed on 5/30/2006) (Entered: 05/31/2006)
06/21/2006	<u>144</u>	JOINT CASE MANAGEMENT STATEMENT filed by Alphaone Pharmaceuticals, Inc.. (Attachments: # <u>1</u>)(Kim, Grant) (Filed on 6/21/2006) (Entered: 06/21/2006)
06/21/2006	<u>145</u>	CERTIFICATE OF SERVICE by Alphaone Pharmaceuticals, Inc. re <u>144</u> Case Management Statement (Joint) (Kim, Grant) (Filed on 6/21/2006) (Entered: 06/21/2006)
06/27/2006	<u>146</u>	Minute Entry: Motion Hearing held on 6/23/2006 before Susan Illston (Date Filed: 6/27/2006) re <u>129</u> MOTION to Dismiss <i>Arriva Pharmaceutical's Motion to Dismiss Declaratory Relief Counterclaim of Defendants Sonoran Desert Chemicals, LLC and</i>

		<i>John Lezdey</i> filed by Alphaone Pharmaceuticals, Inc.. (Court Reporter K. Powell.) (ys, COURT STAFF) (Date Filed: 6/27/2006) (Entered: 06/28/2006)
06/28/2006	<u>147</u>	CLERK'S NOTICE Removing Case from E-Filing Program. (ys, COURT STAFF) (Filed on 6/28/2006) (Entered: 06/28/2006)
07/06/2006	<u>148</u>	ORDER by Judge Illston granting <u>129</u> Motion to Dismiss counterclaim; conditioned upon plaintiff's dismissal of claims (ts, COURT STAFF) (Filed on 7/6/2006) (Entered: 07/06/2006)
07/13/2006	149	Dismissal of its claims against Sonoran Desert Chemicals, LLC., John Lezdey, Protease Sciences, Inc., J.L. Technology, LP., and J&D Science, Inc. by Alphaone Pharmaceuticals, Inc.. (ys, COURT STAFF) (Filed on 7/13/2006) (Entered: 07/14/2006)
07/13/2006	150	Amended CERTIFICATE OF SERVICE by Alphaone Pharmaceuticals, Inc. re <u>149</u> Dismissal of Its Claims. (ys, COURT STAFF) (Filed on 7/13/2006) (Entered: 07/14/2006)
07/14/2006	151	ORDER: Dismissal of plaintiff's claims against Sonoran Desert Chemicals, LLC., John Lezdey, Protease Sciences, Inc., JL Technology, LP, and J&D Science, Inc.. Signed by Judge Susan Illston on 7/14/06. (ys, COURT STAFF) (Filed on 7/14/2006) (Entered: 07/17/2006)
07/17/2006	152	Mail Returned re <u>148</u> as Undeliverable. Mail sent to Jarett Lezdey. (ys, COURT STAFF) (Filed on 7/17/2006) (Entered: 07/20/2006)
07/20/2006	153	SUGGESTION OF BANKRUPTCY Upon the Record as to Darren B. Lezdey by Darren Lezdey. (ys, COURT STAFF) (Filed on 7/20/2006) (Entered: 07/20/2006)
07/20/2006	154	SUGGESTION OF BANKRUPTCY Upon the Record as to Jarret R. Lezdey by Jarett Lezdey, Jarett Lezdey. (ys, COURT STAFF) (Filed on 7/20/2006) (Entered: 07/20/2006)
07/24/2006	155	STIPULATION AND ORDER: Case Management Conference reset for 9/1/2006 02:30 PM.. Signed by Judge Susan Illston on 7/24/06. (ga, COURT STAFF) (Filed on 7/24/2006) (Entered: 07/28/2006)
07/24/2006	156	NOTICE by Alphaone Pharmaceuticals, Inc. re <u>151</u> Order (ga, COURT STAFF) (Filed on 7/24/2006) (Entered: 07/28/2006)
07/27/2006	157	Mail Returned as Undeliverable <u>148</u> . Mail sent to Douglas J. Rovens. (ga, COURT STAFF) (Filed on 7/27/2006) (Entered: 08/02/2006)
08/07/2006		Mail Returned as Undeliverable. Mail sent to Darren Lezdey. (hdj,

		COURT STAFF) (Filed on 8/7/2006) (Entered: 08/09/2006)
08/11/2006	158	Mail Returned re <u>155</u> as Undeliverable. Mail sent to Jarett Lezdey. (ys, COURT STAFF) (Filed on 8/11/2006) (Entered: 08/16/2006)
08/29/2006	159	JOINT CASE MANAGEMENT STATEMENT filed by Alphaone Pharmaceuticals, Inc.. (ys, COURT STAFF) (Filed on 8/29/2006) (Entered: 08/30/2006)
09/06/2006	160	Minute Entry: Further Case Management Conference held on 9/1/2006 before Susan Illston (Date Filed: 9/6/2006). The Court will issue an order to show cause re: trustee's counterclaims. (Court Reporter None.) (ys, COURT STAFF) (Date Filed: 9/6/2006) (Entered: 09/07/2006)
09/06/2006	161	ORDER to Bankruptcy Trustee for Darren and Jarett Lezdey to make showing re: prosecution of counterclaims with the Court on or before 9/18/06, a statement of his intention concerning prosecution of these counterclaims, together with a litigation plan. In the event the Trustee does plan to pursue these matters, he is ordered to appear in this court, through counsel, at a Case Management Conference on 9/22/06 at 2:30 p.m.. Signed by Judge Susan Illston on 9/6/06. (ys, COURT STAFF) (Filed on 9/6/2006) (Entered: 09/07/2006)
09/12/2006	162	NOTICE of Entry of Order by Alphaone Pharmaceuticals, Inc. re <u>161</u> Order. (ys, COURT STAFF) (Filed on 9/12/2006) (Entered: 09/12/2006)
09/12/2006	163	CERTIFICATE OF SERVICE by Alphaone Pharmaceuticals, Inc. re <u>162</u> Notice (Other) (ys, COURT STAFF) (Filed on 9/12/2006) (Entered: 09/12/2006)
09/13/2006	164	Amended CERTIFICATE OF SERVICE by Alphaone Pharmaceuticals, Inc. re <u>162</u> Notice(ys, COURT STAFF) (Filed on 9/13/2006) (Entered: 09/13/2006)
09/18/2006	165	Andrea P. Bauman, Chapter 7 Trustee's Statement of Intention by Jarett Lezdey, Darren Lezdey. (ys, COURT STAFF) (Filed on 9/18/2006) (Entered: 09/18/2006)
09/18/2006	166	Mail Returned as Undeliverable re <u>161</u> . Mail sent to Darren Lezdey. (ys, COURT STAFF) (Filed on 9/18/2006) (Entered: 09/19/2006)
09/20/2006	167	RESPONSE to re <u>165</u> Andrea P. Bauman, Chapter 7 Trustee's Statement of Intention by Alphaone Pharmaceuticals, Inc.. (ys, COURT STAFF) (Filed on 9/20/2006) (Entered: 09/20/2006)
09/21/2006	<u>168</u>	ORDER TO BANKRUPTCY TRUSTEE FOR DARREN AND

		JARETT LEZDEY TO MAKE SHOWING RE: PROSECUTION OF COUNTERCLAIMS. Signed by Judge Illston on 9/19/06. (ts, COURT STAFF) (Filed on 9/21/2006) (Entered: 09/21/2006)
09/21/2006		Set Deadlines/Hearings: Case Management Conference set for 11/17/2006 02:00 PM. (ys, COURT STAFF) (Filed on 9/21/2006) (Entered: 09/22/2006)
09/21/2006	169	CERTIFICATE OF SERVICE re <u>168</u> Order by <i>USDC</i> . (ys, COURT STAFF) (Filed on 9/21/2006) (Entered: 09/22/2006)
09/25/2006	170	Mail Returned re <u>161</u> as Undeliverable. Mail sent to Jarett Lezdey. (ys, COURT STAFF) (Filed on 9/25/2006) (Entered: 09/26/2006)
10/02/2006	171	Mail Returned re <u>168</u> as Undeliverable. Mail sent to Darren Leqdey. (ys, COURT STAFF) (Filed on 10/2/2006) (Entered: 10/02/2006)
10/02/2006	172	Mail Returned re <u>169</u> as Undeliverable. Mail sent to Douglas Rovens. (ys, COURT STAFF) (Filed on 10/2/2006) (Entered: 10/03/2006)
10/03/2006	173	Mail Returned re <u>168</u> as Undeliverable. Mail sent to Douglas J. Rovens. (ys, COURT STAFF) (Filed on 10/3/2006) (Entered: 10/05/2006)
10/20/2006	174	Mail Returned re <u>161</u> as Undeliverable. Mail sent to Douglas J. Rovens. (ys, COURT STAFF) (Filed on 10/20/2006) (Entered: 10/20/2006)
11/17/2006	175	Andrea P. Bauman, Chapter 7 Trustee's Statement of Intention by Jarett Lezdey, Darren Lezdey. (ys, COURT STAFF) (Filed on 11/17/2006) (Entered: 11/17/2006)
11/22/2006	<u>176</u>	Minute Entry: Further Case Management Conference held on 11/17/2006 before Illston (Date Filed: 11/22/2006). Case continued to 12/15/06 @ 2:30 p.m. for Further Management Conference. The Trustee must appear at the next case management conference if the case is not resolved prior to 12/15/06.() (ts, COURT STAFF) (Date Filed: 11/22/2006) (Entered: 11/22/2006)
11/22/2006		Set Deadlines/Hearings: Case Management Conference set for 12/15/2006 02:30 PM. (ys, COURT STAFF) (Filed on 11/22/2006) (Entered: 11/27/2006)
12/04/2006	177	MOTION to Appear by Telephone at December 15, 2006 Case Management Confernece filed by Jarett Lezdey, Darren Lezdey. (ys, COURT STAFF) (Filed on 12/4/2006) (Entered: 12/04/2006)
12/12/2006		Received Document Stipulation and proposed order dismissing

		claims and counterclaims of Arriva Pharmaceuticals, Darren B. Lezdey, and Jarett R. Lezdey by Alphaone Pharmaceuticals, Inc., Jarett Lezdey, Darren Lezdey. (ys, COURT STAFF) (Filed on 12/12/2006) (Entered: 12/13/2006)
12/13/2006	178	NOTICE of Filing by Andrea P. Bauman. (ys, COURT STAFF) (Filed on 12/13/2006) (Entered: 12/13/2006)
12/18/2006	179	STIPULATION AND ORDER DISMISSING CLAIMS AND COUNTERCLAIMS OF ARRIVA PHARMACEUTICALS, DARREN B. LEZDEY, AND JARETT R. LEZDEY without prejudice. Signed by Judge Susan Illston on 12/15/06. (ys, COURT STAFF) (Filed on 12/18/2006) (Entered: 12/19/2006)
12/21/2006	180	NOTICE of Entry of Order by Alphaone Pharmaceuticals, Inc. re <u>179</u> Order Dismissing Case. (ys, COURT STAFF) (Filed on 12/21/2006) (Entered: 12/21/2006)
01/17/2007	181	Mail Returned as Undeliverable. Mail sent to Jarett Lezdey re <u>179</u> . (ys, COURT STAFF) (Filed on 1/17/2007) (Entered: 01/18/2007)

PACER Service Center			
Transaction Receipt			
01/07/2008 21:26:40			
PACER Login:	sm0064	Client Code:	12KB-124801/2443/
Description:	Docket Report	Search Criteria:	3:99-cv-02169-SI
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A – 2 (Part 2)

Entered on Docket
 December 27, 2007
 GLORIA L. FRANKLIN, CLERK
 U.S. BANKRUPTCY COURT
 NORTHERN DISTRICT OF CALIFORNIA



Signed: December 27, 2007

EDWARD D. JELLEN
 U.S. Bankruptcy Judge

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 & HAMPTON LLP
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9 Attorneys for Debtor ARRIVA
 PHARMACEUTICALS, INC.

11 UNITED STATES BANKRUPTCY COURT
 12 NORTHERN DISTRICT OF CALIFORNIA
 13 OAKLAND DIVISION

14 In re

15 ARRIVA PHARMACEUTICALS, INC., a
 California corporation,

16 Debtor.

17 Tax ID: 94-3287067

Case No. 07-42767

Chapter 11

**ORDER DISALLOWING CLAIM OF
 ALPHAMED PHARMACEUTICALS
 CORP. (CLAIM NO. 19)**

Date: December 13, 2007
 Time: 2:00 p.m.
 Place: United States Bankruptcy Court
 1300 Clay Street, Oakland, CA
 Judge: Hon. Edward D. Jellen
 Ctrm: 215

22 On October 11, 2007, AlphaMed Pharmaceuticals Corp. filed a claim (the
 23 "AlphaMed Claim") in the amount of \$78 million in the above-captioned bankruptcy case
 24 (the "Bankruptcy Case"). The AlphaMed Claim was listed as Claim No. 19 on the claims
 25 register for the Bankruptcy Case. On November 7, 2007, Arriva Pharmaceuticals, Inc., the
 26 debtor in the Bankruptcy Case (the "Debtor") objected to the AlphaMed Claim in its
 27 Omnibus Objection to Claims and Alternative Motion to Value Claims at Zero for Voting
 28 Purposes and its Memorandum of Points and Authorities in support thereof (collectively,

1 the "Objection"), filed on the docket for the Bankruptcy Case as #'s 154 and 155,
2 respectively.

3 On December 13, 2007, the Court heard argument on the Objection. The
4 appearances were as indicated in the record. For all the reasons stated on the record, which
5 reasons constitute the findings of this Court by Bankruptcy Rule 7052,

6 **IT IS HEREBY ORDERED THAT**

7 1. The Objection is sustained. The AlphaMed Claim is disallowed in its
8 entirety, without leave to amend.

9 2. Further, in the event that such a ruling becomes necessary, the
10 AlphaMed Claim is estimated at zero for voting purposes under the Debtor's plan as it
11 currently exists or is hereafter amended.

12 3. This order does not preclude reconsideration under Bankruptcy Code
13 Section 502(j) or otherwise based on further developments in the pending Florida
14 litigation.

15 **** END OF ORDER ****
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Entered on _____ at
 December 27, 2007
 GLORIA L. FRANKLIN, CLERK
 U.S. BANKRUPTCY COURT
 NORTHERN DISTRICT OF CALIFORNIA



Signed: December 27, 2007

EDWARD D. JELLEN
 U.S. Bankruptcy Judge

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 & HAMPTON LLP
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 Including Professional Corporations
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 4 ORI KATZ, Cal. Bar No. 209561
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9 Attorneys for Debtor ARRIVA
 PHARMACEUTICALS, INC.

11 UNITED STATES BANKRUPTCY COURT
 12 NORTHERN DISTRICT OF CALIFORNIA
 13 OAKLAND DIVISION

14 In re

Case No. 07-42767

15 ARRIVA PHARMACEUTICALS, INC., a
 California corporation,

Chapter 11

16 Debtor.

**ORDER DISALLOWING CLAIM OF
 PROTEASE SCIENCES, INC. (CLAIM
 NO. 12)**

17 Tax ID: 94-3287067

18 Date: December 13, 2007
 19 Time: 2:00 p.m.
 Place: United States Bankruptcy Court
 1300 Clay Street, Oakland, CA
 20 Judge: Hon. Edward D. Jellen
 Ctmm: 215

23 On October 9, 2007, Protease Sciences, Inc. filed a claim (the "Protease Claim") in
 24 the amount of \$30 million in the above-captioned bankruptcy case (the "Bankruptcy
 25 Case"). The Protease Claim was listed as Claim No. 12 on the claims register for the
 26 Bankruptcy Case. On November 7, 2007, Arriva Pharmaceuticals, Inc., the debtor in the
 27 Bankruptcy Case (the "Debtor") objected to the Protease Claim in its Omnibus Objection
 28 to Claims and Alternative Motion to Value Claims at Zero for Voting Purposes and its

1 Memorandum of Points and Authorities in support thereof (collectively, the "Objection"),
2 filed on the docket for the Bankruptcy Case as #'s 154 and 155, respectively.

3 On December 13, 2007, the Court heard argument on the Objection. The
4 appearances were as indicated in the record. For all the reasons stated on the record, which
5 reasons constitute the findings of this Court by Bankruptcy Rule 7052,

6 **IT IS HEREBY ORDERED THAT**

7 1. The Objection is sustained. The Protease Claim is disallowed in its
8 entirety, without leave to amend.

9 2. Further, in the event that such a ruling becomes necessary, the
10 Protease Claim is estimated at zero for voting purposes under the Debtor's plan as it
11 currently exists or is hereafter amended.

12 ** END OF ORDER **
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Entered on 12/27/2007
 December 27, 2007
 GLORIA L. FRANKLIN, CLERK
 U.S. BANKRUPTCY COURT
 NORTHERN DISTRICT OF CALIFORNIA



Signed: December 27, 2007

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EDWARD D. JELLEN
 U.S. Bankruptcy Judge

Attorneys for Debtor ARRIVA
 PHARMACEUTICALS, INC.

UNITED STATES BANKRUPTCY COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION

In re

Case No. 07-42767

ARRIVA PHARMACEUTICALS, INC., a
 California corporation,

Chapter 11

Debtor.

**ORDER DISALLOWING CLAIM OF
 SONORAN DESERT CHEMICALS,
 LLC (CLAIM NO. 14)**

Tax ID: 94-3287067

Date: December 13, 2007
 Time: 2:00 p.m.
 Place: United States Bankruptcy Court
 1300 Clay Street, Oakland, CA
 Judge: Hon. Edward D. Jellen
 Ctrm: 215

On October 9, 2007, Sonoran Desert Chemicals, LLC filed a claim (the "Sonoran Claim") in an undetermined amount in the above-captioned bankruptcy case (the "Bankruptcy Case"). The Sonoran Claim was listed as Claim No. 14 on the claims register for the Bankruptcy Case. On November 7, 2007, Arriva Pharmaceuticals, Inc., the debtor in the Bankruptcy Case (the "Debtor") objected to the Sonoran Claim in its Omnibus

1 Objection to Claims and Alternative Motion to Value Claims at Zero for Voting Purposes
2 and its Memorandum of Points and Authorities in support thereof (collectively, the
3 "Objection"), filed on the docket for the Bankruptcy Case as #'s 154 and 155, respectively.

4 On December 13, 2007, the Court heard argument on the Objection. The
5 appearances were as indicated in the record. For all the reasons stated on the record, which
6 reasons constitute the findings of this Court by Bankruptcy Rule 7052,

7 **IT IS HEREBY ORDERED THAT**

8 1. The Objection is sustained. The Sonoran Claim is disallowed in its
9 entirety, without leave to amend.

10 2. Further, in the event that such a ruling becomes necessary, the
11 Sonoran Claim is estimated at zero for voting purposes under the Debtor's plan as it
12 currently exists or is hereafter amended.

13 ** END OF ORDER **
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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
(OAKLAND DIVISION)

In re:

ARRIVA PHARMACEUTICALS, INC., Case No. 07-42767J
Chapter 11
Oakland, California
December 13, 2007
3:14 p.m.

Debtor.

ALPHAMED PHARMACEUTICALS,

Plaintiff,

v.

A.P. No. 07-4181 AJ

ARRIVA PHARMACEUTICALS, INC.,

Defendant.

TRANSCRIPT OF PROCEEDINGS
JUDGE'S RULING ONLY

1. MOTION OF JOHN LEZDEY FOR AUTHORITY TO FILE
LATE PROOF OF CLAIM
2. DEBTOR'S OMNIBUS OBJECTION TO CLAIMS
3. DEBTOR'S MOTION FOR ORDER REQUIRING COMPLIANCE WITH
FEDERAL RULE OF CIVIL PROCEDURE 2019
4. MOTION FOR RELIEF FROM STAY FILED BY
ALPHAMED PHARMACEUTICALS
5. DEFENDANT'S MOTION TO DISMISS COMPLAINT
FILED BY ALPHAMED

BEFORE THE HONORABLE EDWARD D. JELLEN
UNITED STATES BANKRUPTCY JUDGE

1 APPEARANCES:

2 For the Debtor:

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7 For the Creditors'
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11 For Alphamed:

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12 BY: DOUGLAS J. ROVENS, ESQ.

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13

-and-

14

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15 BY: PENN AYERS BUTLER, ESQ.

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16 Palo Alto, California 94304

17

18 For MPM Capital:

EDWARDS & ANGELL, LLP

19 BY: ERICA LAZAR, ESQ.

20 (APPEARING TELEPHONICALLY)

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APPEARANCES (CONTINUED) :

Court Recorder: T. LEYBA
UNITED STATES BANKRUPTCY COURT
1300 Clay Street
Oakland, California 94612

Transcription Service: Jo McCall
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Recording/Transcribing
2868 E. Clifton Court
Gilbert, AZ 85297
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1 P R O C E E D I N G S

2 December 13, 2007 3:14 p.m.

3 -oOo-

4 THE COURT: All right. I'll call Arriva
5 Pharmaceuticals. I understand we have a telephone
6 appearance. May I have the telephone appearance first.

7 MS. LAZAR: Yes, Your Honor. This is Erica Lazar.
8 I'm here on behalf of MPM entities.

9 THE COURT: All right. Ms. Lazar, could you spell
10 your last name for the record, please?

11 MS. LAZAR: Yes, it's L-a-z-a-r.

12 THE COURT: All right. Thank you. And now the in
13 court appearances.

14 MR. AHRENS: Your Honor, Michael Ahrens, Tim Perry
15 and Mike Lauter for the Debtor, of Sheppard Mullin.

16 THE COURT: All right.

17 MR. COOPER: Michael Cooper, Wendel, Rosen, Black
18 and Dean for the Official Creditors' Committee. With me
19 today, Your Honor, is my colleague, Tracy Green.

20 THE COURT: Okay. Thank you.

21 MR. ROVENS: Good afternoon, Your Honor, Doug
22 Rovens and Penn Butler on behalf of Alphamed
23 Pharmaceuticals.

24 THE COURT: All right. Thank you.

25 (Whereupon, the following colloquy is not transcribed and

1 the matter is recalled at 3:14 p.m. for the ruling.)

2 THE COURT: Okay. Then I'm recalling Arriva
3 Pharmaceuticals. Appearances have previously been stated,
4 so there is no need for the parties to restate their
5 appearances. I believe everybody has been given a chance
6 to have their say, so unless there's somebody who stated an
7 appearance who wants to be heard that hasn't been heard,
8 I'm ready to announce rulings.

9 All right. With that, let me take what I
10 consider to be the easiest one first, and that's Alphamed's
11 motion for relief from the automatic stay. I'm going to
12 grant that motion to the extent of permitting the appeals
13 to go forward as far as they might go without prejudice to
14 renewal of the motion or a motion to expand the scope of
15 the relief in the event that a new trial should be ordered,
16 but I would like to retain that discretion, depending on
17 what's going on in the main case at the time. So the
18 reasons are not very complex. I just don't think it's the
19 province of a Bankruptcy Court to tell a Court of Appeals
20 that they can't hear a matter when a timely appeal has been
21 filed or requested, and major issues remain to be resolved,
22 especially issues that did not arise under the Bankruptcy
23 Code or in connection with the bankruptcy case.

24 And so I believe Alphamed is entitled to its day
25 in court to get a final decision in the Florida matter so

1 Mr. Butler or whoever as the case may be, would you submit
2 an order in that regard.

3 MR. BUTLER: Yes, Your Honor.

4 THE COURT: All right.

5 The second easiest matter as far as I'm concerned
6 is the Rule 2019 motion which I'm going to deny. I think
7 the Squires firm has gone on record as to the fact of its
8 representation to the various entities and I think the
9 relationship among them is well known to all the parties in
10 interest. There's no secret connections here that appear
11 to have surfaced. I think everybody knows what everybody
12 else's economic incentive is. I don't think Squires
13 disclosing its particular fee arrangements are going to
14 advance the ball in terms of anything involving a stated
15 administration. The parties are well known to each other,
16 and I think what has been disclosed is sufficient. So
17 again, I'll ask Mr. Butler to submit an order denying that
18 motion.

19 MR. BUTLER: Thank you, Your Honor.

20 THE COURT: All right. As to the Debtor's motion
21 to dismiss Alphamed's complaint, I'm going to grant that
22 motion under Rule 12(b)(6). First of all, I'm holding that
23 Alphamed has no standing to bring this action. The
24 gravamen of the action is that they want a ruling that the
25 license is not property of the estate and they've alleged

1 no particularized harm. The standing issue in a bankruptcy
2 case is the leading case is the Fondular case (Phonetic).
3 It's 707 F2d, 441, where to have standing an entity must
4 demonstrate that the order at issue or at issue before the
5 Court may diminish the property of the plaintiff or
6 increase its burdens or detrimentally affect its rights.

7 Subsequent cases, including cases under Circuits,
8 have clarified that the matter can't be one that generally
9 affects creditors. For example, one court said that,
10 quote:

11 "If a claim is a general one with no
12 particularized injury arising from it, and if
13 that claim could be brought by any creditor of
14 the debtor, the trustee is the proper person to
15 assert the claim and the creditors are bound by
16 the outcome of the trustee's action."

17 That's the Call Vorhes & Company versus American Financial
18 Corp. (Phonetic) 8 F3d, 130, 2nd Circuit ('93). There are
19 lots and lots of cases along the same lines. Here, I don't
20 think that there's been any particularized injury alleged
21 at all by Alphamed. They're not trying to quiet their own
22 title to anything. In fact, they disclaim any intent of
23 trying to quiet their own title to an asset as against the
24 claim of the estate. They're not even seeking a ruling as
25 to who if anyone might own the license other than the

1 Debtor. They just want to get it out of the estate. That
2 sort of cause of action is not particularized, generalized.
3 There's no specific injury. If there were standing to
4 assert such a cause of action, it would lie in every single
5 creditor in the estate, and the law is that not every
6 single creditor in the estate has the right to prosecute
7 actions to determine what is and isn't property of the
8 estate. Rather, under Bankruptcy Code Section 323(a), the
9 trustee is the representative of the estate, and here,
10 under Chapter 11, the Debtor in Possession has all the
11 powers of a trustee.

12 I read the Catholic Diocese case, which seemed to
13 suggest that any creditor can bring an action to determine
14 the properties in the estate. I have two reasons for
15 rejecting that case. First, it's distinguishable on its
16 facts. There, it was an action to bring in property of the
17 estate not to exclude property from the estate. Secondly,
18 at least the party in the Catholic Diocese case was a
19 creditor, where here, based on the record as it now stands,
20 Alphamed is not a creditor. The judgment of the Florida
21 Court found to the contrary.

22 So those are two major reasons for distinguishing
23 the Catholic Diocese case. But frankly, to carry it one
24 step further, I just think that case is wrongly decided,
25 and I'm not bound by it, and I don't want to follow it.

1 The court did not cite Section 323(a) of the Bankruptcy
2 Code. The court did not cite the Fondular case. It didn't
3 cite any of the standing cases in bankruptcy cases that
4 have been resolved by the Ninth Circuit or the Ninth
5 Circuit BAP, recently, the Fulks (Phonetic) case at 211 BR
6 378 where the BAP went through all of the factors that
7 govern standing in bankruptcy cases.

8 If the Catholic Diocese case is correct, then any
9 creditor can bring any action to exclude property or bring
10 property into the estate without any particularized injury
11 whatsoever, and I just don't think that's the law.

12 So to the extent that the Catholic Diocese case
13 is not distinguishable, I just think it violates well
14 established Ninth Circuit law, and I decline to follow it.
15 Moreover, if any creditor could bring actions that affect
16 the estate, notwithstanding 323(a), then who has the
17 authority to settle the case? Who has the authority to
18 appeal the case? I think the cases that deal with the
19 standings issue are very well reasoned to the effect that
20 you can only have one party doing that and that's the
21 representative of the estate, in this case the Debtor in
22 Possession, without all of the creditors running around
23 willy-nilly bringing actions to bring in property of the
24 estate or to exclude property of the estate.

25 So to the extent Catholic Diocese would support

1 Alphamed's position, I decline to follow it and believe
2 that it is not correctly decided.

3 As an alternate ground for my ruling, I think
4 that Alphamed is indeed subject to the Rucker-Feldman
5 (Phonetic) doctrine. Recently, the Supreme Court has
6 stated that Rucker-Feldman is a very narrow one. In the
7 Exxon-Mobile case, at 125 Supreme Court, 1517, they
8 indicated that the Supreme Court has only found the Rucker-
9 Feldman doctrine to be applicable in two cases over the
10 years. But the two cases involved the situation as noted
11 by the Supreme Court where the party lost in the State
12 Court and then filed a Federal action seeking similar
13 relief and in that specific case, the Federal Court is
14 bound by the State Court ruling.

15 On top of Rucker-Feldman, there is a statute, 28
16 U.S.C. 1738, which is the full faith and credit statute
17 which required Federal Courts to give full faith and credit
18 to decisions of State Courts, and here, I have to give full
19 faith and credit to the Florida Court's ruling. This of
20 course is all subject to modification should that ruling be
21 overturned on appeal.

22 So Mr. Ahrens, I will ask you to please submit an
23 order granting the motion to dismiss Alphamed's complaint.

24 MR. AHRENS: I will, Your Honor. Thank you.

25 THE COURT: As to the omnibus objection, the

1 omnibus objection will be sustained as to Prodius
2 (Phonetic). The record is clear that Mr. Lezdey filed the
3 claim on behalf of Prodius. He filed it in violation of a
4 preliminary injunction. I do not believe that the
5 injunction in any way restricts or limits Federal Courts or
6 Federal Court jurisdiction. All it does is restrict Mr.
7 Lezdey from what he can do on behalf of Prodius, and the
8 answer is he can't do anything, and that was a matter of
9 non-bankruptcy State law as to what his authority is, Mr.
10 Lezdey's authority as to Prodius, and so I reject the
11 argument that not letting him file the claim for Prodius is
12 in derogation of any Federal jurisdiction.

13 For the exact same reason I sustain the omnibus
14 objection as to Sonoran. As to Alphamed, I believe I've
15 discussed my reasons why the objection to its claim is to
16 be sustained, although that ruling is again subject to
17 being revisited -- this ruling is subject to being
18 revisited in the event that the Florida Court ends up
19 finding that Alphamed does have a valid claim against the
20 Debtor.

21 I also sustain the omnibus objection as to Jamie
22 Holding (Phonetic), which I believe is bound by the
23 findings in the Arizona litigation on the theory, if
24 nothing else, that it was in privity with the particular
25 parties.

1 And finally, I sustain the objection as to Mr.
2 John Lezdey. First -- and in doing so, I also deny the
3 motion to allow his late-filed claim. Everybody here is
4 familiar with the Pioneer case by the Supreme Court which
5 cited a series of factors the court is to look at: the
6 danger of prejudice to the debtor, the length of the delay
7 and its potential impact on judicial proceedings, the
8 reason for the delay including whether it was in the
9 reasonable control of the movant and whether the movant
10 acted in good faith. Here, although not every one of the
11 factors dictates in favor of the Debtor's objection, I do
12 find that the filing of the claim was under the reasonable
13 control of the movant. Indeed, Mr. Lezdey was able to file
14 claims on behalf of his other entities on a timely basis,
15 and no explanation, plausible explanation, has been offered
16 as to why if he thought he had a claim, he couldn't do it
17 on behalf of himself.

18 I also find that he did not act in good faith in
19 filing his claim. Just the claim on its face is lacking in
20 any kind of specificity. I don't even think it gives
21 reasonable notice as to the basis for the claims, and this
22 is especially true in light of the history of litigation
23 between Mr. Lezdey and the Debtor and the findings of the
24 State Court.

25 On top of denying the motion to file the late

1 claim, I would deny the motion on the -- I would disallow
2 his claim; I'm backing up a little -- based on the shares
3 and the theft and I.P. loss and the malicious prosecution
4 claims for the reasons outlined by the Debtor in the
5 objection which I'm not going to go through. I reject the
6 Debtor's arguments that the lack of any records on the
7 Debtor's part is a basis for disallowing the claim. I
8 reject the Debtor's argument that the fact that there's no
9 judgment is a basis for disallowing the claim. But as to
10 those three items, I accept the remaining arguments as a
11 basis for disallowing Mr. Lezdey's claim.

12 As to the spinal injury and defamation, the
13 Bankruptcy Court's jurisdiction to rule on personal injury
14 claims is limited. They seem to be personal injury claims,
15 so that in the event that it turns out that the -- my
16 ruling on the late claim is overturned by a higher court, I
17 believe that the spinal injury and defamation claims would
18 have to be litigated in District Court. It would be my
19 intention to recommend that the reference be withdrawn as
20 to litigating those matters.

21 I think I've ruled on everything.

22 MR. AHRENS: Your Honor, on J.L. Technology, the
23 ruling is the same as Jamie?

24 THE COURT: Yes. Yes, thank you. I'm sorry about
25 that.

1 MR. AHRENS: We will prepare that order.

2 THE COURT: All right. And my statements on the
3 record will constitute my findings and conclusions.

4 Oh, there is one motion I didn't rule on, and
5 that's the motion to estimate. As a backup and alternative
6 ruling, I'm going to estimate each of the claims at issue
7 as zero, based -- for the same reasons I choose to disallow
8 them. So if a backup ruling on that is needed as an
9 alternative ground, I would estimate them as zero. I do
10 not believe that I need to make factual findings if the
11 basis for the disallowance is based on law as opposed to
12 findings of fact, and that is I believe the case here.

13 MR. AHRENS: Thank you, Your Honor. I just have
14 one housekeeping matter.

15 THE COURT: Yes.

16 MR. AHRENS: Yesterday, Mr. Butler and myself and
17 Mr. Cooper all agreed upon the form of the Disclosure
18 Statement and order to be entered. Should we upload that
19 tonight or do you -- we also have a copy of the Disclosure
20 Statement order.

21 THE COURT: I could -- if you've got a copy right
22 here and it'll move things along, I could sign it.

23 MR. AHRENS: And then per the order of the Court,
24 we will be mailing out the Plan package on Monday.

25 THE COURT: All right. Did anybody have any

1 continuing objections to the Disclosure Statement that have
2 not been resolved, without conceding any confirmation
3 issues, of course?

4 All right, Mr. Ahrens, you've made all the
5 changes that have been ordered?

6 MR. AHRENS: Yes, Your Honor.

7 THE COURT: Okay.

8 MR. AHRENS: Thank you, Your Honor. I think that
9 concludes the matters for today.

10 THE COURT: All right. Thank you all. Madam
11 Deputy, I believe that concludes our court for today.

12 THE CLERK: Yes, Your Honor.

13 THE COURT: All right. Thank you.

14 (Whereupon, the proceedings are concluded at 3:30
15 p.m.)

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CERTIFICATE OF TRANSCRIBER

I certify that the foregoing is a correct transcript from the digital sound recording of the proceedings in the above-entitled matter.

DATED: December 29, 2007

By: /s/ Jo McCall

Entered on [REDACTED]
 January 14, 2008
 GLORIA L. FRANKLIN, CLERK
 U.S. BANKRUPTCY COURT
 NORTHERN DISTRICT OF CALIFORNIA



Signed: January 11, 2008

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EDWARD D. JELLEN
 U.S. Bankruptcy Judge

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 PHARMACEUTICALS, INC.

11 UNITED STATES BANKRUPTCY COURT
 12 NORTHERN DISTRICT OF CALIFORNIA
 13 OAKLAND DIVISION

14 In re

Case No. 07-42767

15 ARRIVA PHARMACEUTICALS, INC., a
 California corporation,

Chapter 11

16 Debtor.

17 Tax ID: 94-3287067

18 ALPHAMED PHARMACEUTICALS
 19 CORP.

Adv. Pro. No. 07-4181

20 Plaintiff

**ORDER GRANTING MOTION TO
 DISMISS ALPHAMED'S COMPLAINT
 WITHOUT LEAVE TO AMEND**

21 vs.

22 ARRIVA PHARMACEUTICALS, INC., a
 California corporation

Date: December 13, 2007
 Time: 2:00 p.m.
 Place: United States Bankruptcy Court
 1300 Clay Street, Oakland, CA
 Judge: Hon. Edward D. Jellen
 Ctrm: 215

23 Defendant.

1 On October 30, 2007, AlphaMed Pharmaceuticals Corp. ("AlphaMed") initiated the
2 above-captioned adversary case against Arriva Pharmaceuticals, Inc. (the "Debtor"). In
3 response, the Debtor filed its Motion to Dismiss AlphaMed's Complaint (the "Motion").

4 On December 13, 2007, the Court heard argument on the Motion. The appearances
5 were as indicated in the record. For all the reasons stated on the record, which reasons
6 constitute the findings of this Court by Bankruptcy Rule 7052,

7 **IT IS HEREBY ORDERED THAT**

- 8 1. The Motion is granted.
9
10 2. AlphaMed's complaint is dismissed with prejudice.

11 ** END OF ORDER **
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PHARMACEUTICALS, INC.

11
12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

14 On Appeal from the United States Bankruptcy Court
for the Northern District of California
15 Hon. Edward D. Jellen

16 ALPHAONE PHARMACEUTICALS, INC.,

No. 99-02169

17 Plaintiff,

18 v.

[PROPOSED] ORDER RELATING CASES

19 SONORAN DESERT CHEMICALS, LLC,
etc., et al..

20 Defendants
21

22 Having considered the papers submitted and arguments presented on Plaintiff
23 Arriva Pharmaceutical, Inc.'s Administrative Motion to Consider Whether Cases Should
24 Be Related (the "Motion"), IT IS HEREBY ORDERED THAT the Motion is GRANTED.

25 IT IS FURTHER ORDERED THAT the following cases are related within the
26 meaning of Civil Local Rule 3-12:
27
28

1 1. *AlphaOne Pharmaceuticals, Inc. v. Sonoran Desert Chemicals, LLC*, No.
2 99-cv-02169.

3 2. The appeal of AlphaMed Pharmaceuticals Corp. from the final order of
4 the United States Bankruptcy Court for the Northern District of California disallowing its
5 claims, docketed in this Court as *In re Arriva Pharmaceuticals, Inc.*, no. 08-00691.

6 3. The appeal of Sonoran Desert Chemicals, LLC from the final order of the
7 United States Bankruptcy Court for the Northern District of California disallowing its
8 claims, transferred to this Court on January 17, 2008 and previously docketed with the
9 Ninth Circuit Bankruptcy Appellate Panel as case no. 08-1010.

10 4. The appeal of Protease Sciences, Inc. from the final order of the United
11 States Bankruptcy Court for the Northern District of California disallowing its claims,
12 transferred to this Court on January 17, 2008 and previously docketed with the Ninth
13 Circuit Bankruptcy Appellate Panel as case no. 08-1009.

14 5. The appeal of AlphaMed Pharmaceuticals Corp. from the final order of
15 the United States Bankruptcy Court for the Northern District of California dismissing with
16 prejudice its adversary complaint, transferred to this Court on January 29, 2008 and
17 previously docketed with the Ninth Circuit Bankruptcy Appellate Panel as case no. 08-
18 1023.

19 IT IS FURTHER ORDERED THAT the above-enumerated cases 2-5 are hereby
20 assigned to United States District Judge Illston, the assigned judge in the earlier-filed
21 action, *AlphaOne Pharmaceuticals, Inc. v. Sonoran Desert Chemicals, LLC*, No. 99-
22 02169.

23 IT IS SO ORDERED.

24
25 Dates: January __, 2008.
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